UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 11-CR-00683(NG)

:

-against- : United States Courthouse

: Brooklyn, New York

STEVENSON DUNN, LEE HYMOWITZ : Thursday, March 27, 2014

AND MICHAEL FREEMAN, : 9:45 a.m.

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE NINA GERSHON
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

For the Government: LORETTA E. LYNCH, ESQ.

United States Attorney

Eastern District of New York

271 Cadman Plaza East Brooklyn, New York 11201

BY: ANTHONÝ M. CAPOZZOLO, ESQ. CRISTINA MARIE POSA, ESQ.

Assistant United States Attorney

For the Defendant: BY: ROBERT A. EVANS, JR., ESQ.

Stevenson Dunn

For the Defendant: BY: MAURICE H. SERCARZ, ESQ.

Lee Hymowitz ROBERT CALIENDO, ESQ.

For the Defendant: BY:GERALD J. DICHIARA, ESQ. Michael Freeman NICHOLAS PINTO, ESQ.

Also Present: Naushan Richards, Special Agent

Susannah Apuzzo, Paralegal

Court Reporter: VICTORIA A. TORRES BUTLER, CRR

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Proceedings recorded by mechanical stenography, transcript

produced by Computer-Assisted Transcription.

	Proceedings 2160
1	(In open court.)
2	(Judge NINA GERSHON enters the courtroom.)
3	THE COURTROOM DEPUTY: All rise.
4	THE COURT:
5	THE COURTROOM DEPUTY: United States District Court
6	for the Eastern District of New York is now in session, the
7	Honorable Nina Gershon is now presiding.
8	THE COURT: Good morning.
9	THE COURTROOM DEPUTY: Criminal cause for a trial,
10	United States versus Stevenson Dunn, et al.
11	May I have your appearances, for the Government.
12	MS. POSA: Cristina Posa, Anthony Capozzolo, Special
13	Agent Naushan Richards and Susannah Apuzzo for the Government.
14	Good morning, Your Honor.
15	THE COURTROOM DEPUTY: For Stevenson Dunn.
16	MR. EVANS: The offices of Evans and Al-Shabazz by
17	Robert Anthony Evans for Mr. Dunn.
18	Good morning, Your Honor.
19	THE COURTROOM DEPUTY: For Lee Hymowitz.
20	MR. SERCARZ: Sercarz & Riopelle by Maurice Sercarz
21	and Robert Caliendo.
22	THE COURTROOM DEPUTY: For Michael Freeman.
23	MR. DiCHIARA: Your Honor, Nicholas Pinto and Gerald
24	DiChiara for Mr. Michael Freeman.
25	THE COURTROOM DEPUTY: Thank you, please be seated.

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Summations - Posa
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              THE COURT:
                           May we bring in the jurors?
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              MS. POSA:
                         Yes.
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              MR. EVANS: Yes.
 4
              MR. SERCARZ: Yes.
              MR. DiCHIARA: Yes.
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              THE COURT: All right.
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              May I see what is on the board, please.
              MS. POSA: Sure it's one of the Exhibits, it's the
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9
    chart of the money.
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              THE COURTROOM DEPUTY: All rise.
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               (Jury enters.)
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              THE COURT: Good morning, Jurors.
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              THE JURY: Good morning.
              THE COURTROOM DEPUTY: Thank you, please be seated.
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              THE COURT: All right, Members of the Jury, as I
    said to you yesterday, we will start this morning with our
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    summations. We will begin hearing from Ms. Posa for the
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    Government.
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              MS. POSA:
                         Thank you.
    SUMMATIONS
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    BY MS. POSA:
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              MS. POSA: Good morning.
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              THE JURY: Good morning.
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              MS. POSA: In the beginning of this trial Counsel
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    for Mr. Freeman got up here and he said that there's no
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Summations - Posa

smoking gun in this trial. In a way, he's right. There's no smoking gun because there's no gun. This isn't a murder trial. This is a trial about money and financial fraud. And when you have a trial about money, how do you find the smoking gun? You follow the money. And we submit, ladies and gentlemen, that this is a smoking gun in this trial.

These are the checks that went from Bogdan Starzecki to the defendants. What makes them significant is the timing. You see the first check here that was written on April 5th, 2006 for almost \$49,000. That was the same date that MCR Restoration entered into it's multi-million dollar construction contract with the defendants. Starzecki was literally paying for that contract. He told you that Mr. Dunn had asked him in that fish store for \$450,000 in kickbacks. This is about a ten percent downpayment on that.

The second important date. March 2nd, 2007. That's where you see Starzecki writing \$150,000 worth of checks to all three defendants, Stevenson Dunn using his shell company 334 Marcus Garvey for 50,000 and then another \$100,000 that went to Hymowitz & Freeman. You heard what Mr. Starzecki said about those checks. They were meant to be 50,000, 50,000, 50,000. For S, M and L, the defendants Stevenson Dunn, Michael Freeman and Lee Hymowitz.

If you continue to follow the money just a bit further, it will lead to us the second smoking gun. These two

Summations - Posa

checks, which show unequivocally that Hymowitz & Freeman were in this together.

I want to make one thing clear, Mr. Hymowitz did not have to testify. He had no burden. But he did and I believe the Court will instruct you that you can evaluate his testimony just as you would for any other witness in this trial and since it just happened yesterday, I want you to think about and remember his reaction when he was confronted with these two checks that were written from the SML Bed-Stuy account, the same entity that he has been denying since day one he had any involvement with other than being a lawyer. They were written to himself and his partner, Michael Freeman, on the very same day for the very exact same amount down to the penny. They were clearly partners' shares.

Now, think about what happened when we brought those checks up to him. After he had said not once, but twice, on direct and on cross, that he had never written any checks from that account, he had no financial interest in that account. I submit, ladies and gentlemen, that after years and years of scheming to cover up these kickbacks, to come up with a shoddy retainer agreement, to come up with stories when he was making those recorded phone calls, all the air went out of him right there because he was confronted with indisputable proof that he and Mr. Freeman and Mr. Dunn were all in this together.

That, ladies and gentlemen, is what we call a

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Summations - Posa

smoking gun in a financial fraud case. And I know it's not as interesting as DNA evidence or all the other cool things we see on C.S.I. and on TV but that's exactly what it is.

The defendants in this case are charged with eleven separate Counts. After all of the lawyers have had their chance to speak, the Court will review the elements of these crimes in more detail with you. The Court's instructions are what control here. For now, I am just going to review the elements of each crime in a very brief way to show you how the evidence proves beyond a reasonable doubt that the defendants are guilty of these crimes.

The first charge is RICO conspiracy. What does RICO stand for? It stands for the Racketeer Influenced Corrupt Organizations Act. How do you violate the RICO Act? It's very simple. You corrupt organizations. An enterprise is just a fancy word for an organization and I believe the Court will instruct that you an enterprise can include a Government agency.

Here, the enterprise that was corrupted was the New York City Department of Housing Preservation and Development, HPD. Remember when I asked Wendell Walters what his racket was in terms of this racketeering Count? He said it was taking bribes and kickbacks that influenced his decision-making at HPD. That is the very definition of what it means to corrupt an organization.

Summations - Posa

Now, the parties have agreed in a stipulation that HPD affected interstate commerce. Regarding the third element, I expect that the Court will instruct you that to be associated with an enterprise, you don't have to be formally employed by it. You can have business with it. And as we say in this case, the defendant Stevenson Dunn, who is the only defendant charged in this count, had millions and millions of dollars in business with HPD. He was certainly associated with that enterprise.

Now, it's the fourth and the fifth elements of racketeering conspiracy that are really what's at issue in this case. To conspire to conduct or participate in the affairs of HPD's enterprise, the Government has to show that Mr. Dunn committed at least two of the Racketeering Acts with which he is charged or that he agreed that a co-conspirator committed two of those acts.

Now, almost every one of the Racketeering Acts charged in this case were also substantive crimes charged against Mr. Dunn. So, if you see that any of those two substantive crimes were proven and that they were done, also with the intent of the corrupting HPD, the racketeering conspiracy count of Count 1 is proven.

Counts 2, 3, 4 and 5 and Racketeering Acts 1, 2 and 3 deal with the fraud regarding Starzecki's kickback payments to the defendants.

Counts 6 and 7 charge Stevenson Dunn alone with fraud regarding the kickbacks that Armstrong paid, George Armstrong, on the Hancock cluster.

Now, you've seen a lot of documents in this case and all that tiny print and all those line items may have seemed overwhelming at times and we really appreciate your patience and your attention to detail in this case, but the evidence shows that the scheme to defraud was actually quite simple.

The original sin in this case, so to speak, was Starzecki's padding of his first bid to HPD for the SML Bed-Stuy project. Everything that flowed from that bid in that contract was fraudulent. Why? Because all of those requisitions that he submitted and that the defendants submitted to HPD and to the U.S. Department of Housing and Urban Development were based on that original bid. Each one simply showed the percentage of work that was done.

Now, we've heard the defense lawyers get up here and cross and really try muddy the waters on this. They've tried to tell you that as long as 50 percent of the work was done, that requisition was accurate. And perhaps it was as to the percentage. But let's be frank here, 50 percent of say, \$5 million is still a lot more than 50 percent of \$2 million. It was that original padding of the bid that led every single requisition that followed to be fraudulent and that's the heart of the fraudulent scheme. It's actually not that

complicated.

Now, you got to spend a lot of time with Mr. Starzecki. He was not a particularly honest businessman, as we heard him admit over and over again, but there's one thing you have to give him credit for and that's the fact that he was a shrewd businessman and he would not pay a penny more in kickbacks than he needed to pay to get the job. Do you really think that he was going pay \$450,000 worth of kickbacks out of his own pocket? Was he going to take it out of his savings or his retirement account? No. He was going to figure it into his bid when he made that bid to HPD. That's what he told you he did and that's exactly what he did.

Now, it's a fair question to ask, how could he get away with it, because he has to compete against other people; right? What you usually want to do is make sure that you can put in the lowest bid to win the contract. We know how he did it. Mr. Dunn took care of it for him. He told him when he demanded those kickbacks at that fish store in Bed-Stuy that all the other bidders would be bidding high. The fix was in, ladies and gentlemen. And we know that in contracts of that size, it's really not that hard to pad a bid by a few hundred thousand dollars.

Do you know how we know that? Well, Wendell Walters told us. Remember when he was testifying about how he was in cahoots with a real estate developer up in Harlem to buy a

the same way?

Summations - Posa

townhouse up there and the real estate developer, he was a deceased man named Gregory Pascal who was going to fix it up to him and then eventually sell it to him at a low price? And in order to fix it up, where did this Pascal get the money? Wendell Walters told that you he simply added another \$350,000 on to a pre-existing HPD contract for one building up in Harlem. They took that money that was from HPD and meant for that building and put it over to Wendell Walters's townhouse. \$350,000. They were able to pad the bills for that one building with that amount. How is it that the defendants couldn't get away with making sure that a bid for \$5 million for multiple properties in Bed-Stuy couldn't also be padded in

Now we're not saying that people at HPD were necessarily asleep at the wheel, they weren't evaluating the bids, they weren't really paying attention. The fact is that these are multi-million dollar bids. \$450,000 on a \$5 million bid when there are hundreds and hundreds of line items that you saw is not really that much to squeeze in there.

Mr. Dunn, Mr. Hymowitz and Freeman knew exactly what they were doing. They made sure that they asked for enough that they could put a nice chunk of change in their packet, but not so much that it would raise suspicions at HPD.

These are the additional elements of mail and wire fraud. The next element is the defendants' knowledge of the

Summations - Posa

scheme. Because they have stipulated that the wire transfers in this case were interstate. They also stipulated that the mailing that forms the basis of the mail fraud claim went through the U.S. Postal Service. So, the big question here is did each and every single one of these three defendants know about this kickback scheme and the scheme to defraud HPD and the other entities? To answer that question, we need to look at the big picture and then drill down for a little bit.

What you see here are the payments from HPD, HUD and the private lender enterprise to the accounts that the defendants used to receive the money in this contract for SML Bed-Stuy.

Next, what we have are the payments that Hymowitz & Freeman and the SML Bed-Stuy corporation made to MCR Restoration Corp, the general contractor Bogdan Starzecki's company.

Now, if this were a legitimate contract these payments would have ended right here. This is the way the money is supposed to flow, ladies and gentlemen. It's supposed to go down from the funding sources to the developers, to the contractors, but as we know, that's not what happened here. The money flows right back up again. The money in yellow is the money that was never meant to be paid. That's the money that came out of the padding of the original bill and all of the inflated requisitions for payment.

Summations - Posa

Now, I expect that lawyers for the defendants are going to get up here and say these payments here in yellow, they have nothing to do with it. Hymowitz and Freeman, that was that money for that crazy retainer agreement. 334 Marcus Garvey, Mr. Dunn talked to you about this weird debt that he believed he was owed from Bogdan Starzecki from years before, we'll go a little bit into that testimony later. But that's when we need to break down these payments a little bit more and look at the timing to understand what they're really about and that's what I was talking to you about when I discussed the first smoking gun in this case.

These payments were just coming at any time, as you would expect. The first one was the same day that Bogdan Starzecki signed that contract. As I said, he was literally buying the contract. And then these other important payments came again, all on the same day. Do you think it's just a coincidence that Bogdan Starzecki was paying 334 Marcus Garvey and Hymowitz and Freeman all on the same day? If that's the case, then I have to say Hymowitz and Freeman have got to be the unluckiest defendants in the world because of all the days and all the years to get that \$100,000 retainer check payment, it came at the same time that Bogdan Starzecki was paying his \$50,000 in kickback to Stevenson Dunn.

Ladies and gentlemen, I want to remind you that the Government has the burden in this case and that burden is

Summations - Posa

proof beyond a reasonable doubt. It's not proof beyond any doubt in the whole wide world. You have to look at what's reasonable. Is it really reasonable to say that the timing of these payments is just a coincidence? It's not a coincidence. It's a conspiracy. And this timing right here is evidence of these three defendants' agreement to take these kickback financial statements and defraud the City and the Federal Government and the private lenders. That's all a conspiracy is. It's just an agreement to commit crimes and this shows you that that's exactly what they were doing.

I also want to point out one more thing, which is the timing of these checks as they relate to when MCR was actually getting the money. You can see the money flows into the bank account and then the very next day it flows right back out of the bank account. This one payment for 332,000, it was posted on the 19th of January. Chances were that it was actually received by Mr. Starzecki on the 18th. The very same day is when he cuts that check to Marcus Garvey. If that doesn't show that he was taking the money straight from HPD and putting it right back to these defendants, I don't know what does.

Then we have the exact same phenomena happen on January 30th and 31st. He gets \$577,000 from Hymowitz and Freeman in terms of his payment as the general contractor and boom, same day makes those checks right back out again. He

Summations - Posa

waits until he gets the money before he pays the money. As I said, he may not be an honest businessman, but he sure was a shrewd businessman and he wasn't going pay until he had that money in his pocket from the City.

You know what? We don't have to take

Mr. Starzecki's word for it because we have the words of

Mr. Dunn right here recorded on tape. Bob Starzecki walk away

from 150 fucking large. Yo, pay me the rest of our money.

You got to have somebody policing cash or else you're going to have anarchy.

Two things I want to point out to you about this statement. 150 large. What is that? Well, you heard Mr. Starzecki say that yeah, Mr. Dunn demanded 450,000, but there came a time when I said enough is enough and I only give him about 300. He didn't pay him 150,000. Mr. Starzecki had no idea that Dunn had made this exact same statement on tape to George Armstrong. That's what that 150 is all about, ladies and gentlemen.

Second, he says yo, pay me the rest of our money.

Not my money. If it was just him and it wasn't Hymowitz and

Freeman, why wouldn't he say pay me the rest of my money? He
had no problem demanding his money from Anthony Armstrong. He
said our money. He said he was talking about all three
defendants because they were all in this together.

Also, remember we saw another E-mail from him,

partner?

Summations - Posa

Government's Exhibit 616 in which he specifically referred to my two partners. Two partners, not one. Now, you might recall Mr. Capozzolo asked him about this and he said, oh, I just meant one partner, that was a Freudian slip. That's exactly what it was. A Freudian slip is when you say something that's really true, but you don't mean to say it. Of course it's true, why is he going say two instead of one

Now, what about Mr. Freeman? Mr. Starzecki testified that he wanted invoices from Stevenson Dunn. He wanted to cover up these kickback payments. Now, you heard Bogdan Starzecki or you heard the defendant spend a lot of time saying Bogdan Starzecki is a greedy guy. Nobody's saying that he wasn't. He wanted to milk every penny for everything he could get out of it. He even wanted to deduct his kickback payments from his taxes. He didn't lie about it. He admitted it. He wanted to get those invoices from Stevenson Dunn.

Mr. Dunn dropped the ball, he didn't give him the invoices he demanded, so Starzecki decided he was going find another way to get it and he called Mr. Freeman and said hey, can you give me some kind of legal retainer agreement or something that I can use to justify all these payments I'm making to you guys.

What was Mr. Freeman's reaction? Did he say what are you talking about? Did he say what payments, you

shouldn't be paying us, we're paying you? Was he shocked? Was he surprised? Not at all. Sure. We'll give you a retainer agreement.

Now, perhaps Mr. Freeman's Counsel will get up here and say his failure to actually say anything about the kickbacks is proof that he didn't do it. Do you really think Mr. Freeman, an experienced criminal defense lawyer is going to actually say to Mr. Starzecki -- on the phone, mind you -- oh, are you talking about that kickback agreement that we had to defraud the City? Okay, I will definitely give you a fraudulent retainer agreement so we can hide those kickback payments, which are a crime. That never happens. These people are criminals. That's not how criminals talk on the phone.

You heard Wendell Walters say it. He made sure every time he was picking up those payments in coffee cups and golf ball boxes, he would call Mr. Starzecki and then they would go meet. They would go to a golf driving range in the Bronx and that's where they would do it. Criminals don't talk like that on the phone, especially when they're experienced criminal defense lawyers.

Now, you'll notice that Mr. Starzecki didn't testify that he also had this conversation with Mr. Hymowitz. If he were really going to get up here and make up stories to frame all three defendants, he could have said that. This

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Summations - Posa

2175

conversation with Mr. Freeman wasn't on tape. 2 conversation with Mr. Dunn in the fish store wasn't on tape. 3 He could have said yeah, I also talked to Lee about it and 4 yeah, he agreed to give me that retainer agreement. He didn't 5 say that. He wasn't out to frame these defendants. Mr. Hymowitz, what we have to look at is all the facts and all 6 7 the circumstances of this case. I expect the Court will 8 instruct that you that is what your job is, is to look at all 9 of the evidence. And the facts certainly give rise to a lot 10 of reasonable inferences that Mr. Hymowitz is guilty of the crimes with which he's been charged.

Fact. As we saw, Mr. Hymowitz had a very real financial interest in SML Bed-Stuy. He was getting checks from them that he himself was writing. If that is not direct evidence of a financial interest in a company, I don't know what is. And yet, when he wrote that attorney opinion letter that we saw early in the case that went to Mr. Spina from Department of Housing and Urban Development, he certified and he signed on the letter that he wrote as an officer of the Court to a Federal agency that he had quote, no financial interest in SML Bed-Stuy. That was a year after he filled out that signature card where he called himself the vice president of the company.

Why is he so keen to hide his financial interest? Because he knew that that company was getting kickback

2176 Summations - Posa 1 He knew they were committing crimes and he wanted pavments. 2 to keep himself removed from it. He was using his law partner and Mr. Dunn as his buffers. And this brings us back to this 3 4 signature card from 2005 to JP Morgan Chase where Mr. Hymowitz 5 identified himself as a vice president of SML Bed-Stuy. Now, you may recall yesterday that I asked 6 7 Mr. Hymowitz not once, not twice, but four times whether he 8 was, in fact, the vice president of SML Bed-Stuy. Look at how 9 he's dancing around. 10 Your testimony is that you were, in fact, not the vice president; correct? 11 12 That's not what I'm saying. 13 Were you the vice president of SML? 14 I was given the title of vice president. 15 I'm not asking you about your title. Were you, in 16 fact, the vice president of SML Bed-Stuy or were you not? 17 I'm not understanding what you're trying to say. 18 Were you the vice president of SML Bed-Stuy or not? 19 At that point, yes. 20 The day you signed the signature card? 21 Correct. 22 Why is he dancing around like this? Why is he 23 hemming and hawing? What you see here, ladies and gentlemen, 24 are the wheels of his mind spinning because his mind right now 25 is caught in his lie.

Now, I want to stop for a moment. Remember his testimony, then think back to the very first week and think about Bogdan Starzecki's testimony. The Court will instruct you that you can certainly consider the demeanor of the witnesses when you are thinking about whether or not they were credible and whether or not you should believe them. Remember Mr. Starzecki? He sat up here, no hesitation, no equivocating.

Why did you pay that kickback?

To make money.

Why did you pay that kickback?

To make money.

Why did you get those bribes?

To make money.

Why did you give these bribes?

To make money.

The only time he had to pause for a minute was when he was like the human calculator trying to add up the amount of money he was paying out. He was like a robot up there. That was the only time he had to pause and think about it. There was none of this dancing around. He didn't have to be asked the same question four times to get a simple answer. Are you the vice president or not of a company? It's not that complicated, just say yes or no. He never said yes or no. He never gave a straight answer, Mr. Hymowitz.

Summations - Posa

Now, while we're talking about the different credibility of the witnesses, let's think for a minute here about who actually had a motive to lie on the stand.

Mr. Starzecki admitted to paying about a million dollars worth of bribes and kickbacks. It was his information that led to the arrest and conviction of Wendell Walters, a very high-ranking city official. Why in the world does he have to set these three guys up? What's in it for him? He talked about all the other kickback payments, he talked about all the other people, other developers who were arrested as a result of his cooperation. What motive does he have to lie about these three?

And the same goes for Wendell Walters. He talked about getting \$2.5 million in bribes. He rattled off five or six major developers who paid him hundreds of thousands of dollars of bribes. He admitted that his house was a bribe and that he has to give it back to the Government. What motive does he have to frame Stevenson Dunn for paying him \$5,000?

None. It just doesn't make sense, that's not reasonable.

Now that we've talked a little bit about the fraudulent scheme. I want to go back to the actual nitty-gritty of these fraudulent statements. I realize looking at this, it's pretty much impossible to read. However, this is the mailing that forms the basis for the mail fraud claim. This was what Michael Freeman sent to the

Department of Housing and Urban Development. He certified that this was all the money he needed to pay his contractors and not a penny more.

And you recall Mr. Spina said that if there was any excess, that if he didn't need all that money, he was supposed to give it back to HUD. HUD made a \$1.35 million grant, but that grant was the maximum they were going to pay. They didn't have to pay it all if they didn't need to. Shortly before this is when Hymowitz and Freeman got the \$100,000 check, so this whole receipt should never even have been submitted. They had an extra \$10,000 on top of it.

Now, how do we know that all three defendants were aware of these fraudulent statements? Because let's just think for a minute about the great lengths that they went to hide their scheme.

First, Mr. Dunn told Starzecki to write checks to 334 Marcus Garvey. Not to himself, not in his own name. As I said earlier, Starzecki started getting nervous when Dunn wasn't giving him the invoices that he wanted, so he called Mr. Freeman and he said I need to start getting retainer agreements. And who prepared that retainer agreement? Lee Hymowitz himself admitted on tape, I did that. And we have a check for it.

Now, as I said earlier, I expect that the defendants are going to get up here and say that Bob Starzecki was a

Summations - Posa

greedy son of a gun and he'd do anything for money. Now, Mr. Hymowitz's explanation was that the reason why he got \$100,000 was that he made a couple of calls and he sent a couple E-mails trying to get him some work that never actually came to fruition. Do you really think Bogdan Starzecki's going pay him \$100,000 for that? That guy remembered every single penny he's ever paid anybody and exactly what he got for it. He had the assistant commissioner of HPD in his pocket, he's paying kickbacks right and left, he's got tons of business going on. He's really going to pay Lee Hymowitz? With all due respect, I'm sure he has plenty of important contacts in the real estate industry, he's going pay him a \$100,000 for nothing?

And isn't it funny that usually, as we saw with those bills we saw yesterday from the Lutheran Synod, another one of Lee Hymowitz's clients, that when he's got a legitimate client, he provides these very detailed statements down to the very minute, 15-minute increments of how he's billing. But when it comes to Bogdan Starzecki, whoops, lump sum, \$100,000, in my pocket, I've got nothing to show for it. That's not reasonable, ladies and gentlemen.

We can also think about their shifting stories and how they justified this. We have story number one. Got lost in the move. This was after Starzecki's first call to Michael Freeman when he said um, my accountant getting on me, I need

Summations - Posa

to actually get some invoices for that payment I made to you. Sorry, Michael Freeman said, we moved, we threw everything out. This was Mr. Freeman early on in these conversations, apparently before he had a chance to get together with Mr. Hymowitz and get their stories trait.

Then, we have our second story. This is the dog ate my homework excuse. You know what? This would be kind of funny if this wasn't such a serious case. We're talking about a Park Avenue Manhattan law firm and Mr. Hymowitz is telling Special Agent Richards once I get an invoice, I just rip it out of a book. What's he talking about? This is not some pizza parlor where they take your order for pepperoni and throw it out. It's not an all-cash business. He got invoices. We saw those incredibly detailed invoices he got from legitimate clients.

Now, I have to say, this is from Mr. Hymowitz's testimony yesterday. This was a special moment in this trial. This is Mr. Hymowitz trying to explain how he both creates bills that he throws away, but he creates them on a computer. Ladies and gentlemen, if you can understand what he's trying to say here, God bless you, because I really can't. It's there in the computer, I wouldn't know how to get them out.

He said they were in the computer, but he can't get them out? He didn't have a draft stamp in his office and apparently, he didn't have a print button on his computer

Summations - Posa because this makes no sense. Now, I'm going to shift for a minute to this sort of back-up theory that the defendants seem to be trying to present in the course of this trial and again, they have no obligation and no burden to present any type of theory, any alternatives, any testimony or any evidence. (Continued on following page.)

Summation - Posa 2183 (Continuing) 1 MS. POSA: 2 This is what they kept trying to bring out on 3 cross-examination and each time they tried they failed. 4 What they seem to be saying is this. Okay. Maybe we got these kickback payments. But nobody really got hurt 5 because Starzecki did his work. The work got done, and so no 6 7 harm, no foul, right? Nobody was defrauded. They got what 8 they paid for. 9 MR. SERCARZ: Your Honor, I object and ask to 10 approach. 11 THE COURT: Okay. 12 (Side bar.) 13 MR. SERCARZ: The government gets two summations, 14 one in which to present their version of the evidence and a 15 reply summation. The government is now on their first 16 summation. They have spent about 15 minutes setting up straw 17 men for the purpose of knocking them down. They are now in 18 the process of mischaracterizing one of my arguments so that 19 they can attack that. 20 If they are going to continue in this vein, I am 21 going to ask that they not be given a reply summation because 22 it is an abuse of their right to sum up twice, Your Honor. 23 Just taking this piece in isolation, I object to it

because it is a mischaracterization of any theory that I plan

to advance and any question I asked on cross-examination or

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elicited from my client on direct examination.

MS. POSA: You are welcome to say all of that in your summation which comes after ours. I think we have absolutely every right to counter the cross-examination and the defense theory of the case as we see it.

THE COURT: I think the government is correct. The objection is overruled.

(In open court.)

MS. POSA: Going back to what we heard in the cross-examination of many of the government's witnesses, and even the defense witnesses, like Anne Marie Hendrickson, it's okay if these requisitions are a little bit padded because one hundred percent of the work got done.

Ladies and gentlemen, that's a crazy way to look at the government contracting process. The whole reason why these contracts were bid out is to drive down the cost. This is taxpayer money we are talking about and these agencies had an interest in conserving it the best they could.

You heard Anne Marie Hendrickson, Mr. Dunn's witness. The government didn't call Deputy Commissioner Hendrickson. He did. She said at the end of the day padding those bills sticks it to the city.

Pete Spina from HUD got up here. What motive in the world does he have to lie? This is a 33-year government employee. He says, padding those bids sticks it to the

federal government.

We heard the witness from Enterprise, from Community Preservation Corporation, they said the same thing.

Even Mr. Dunn and Mr. Hymowitz could not get up here when they testified and say with a straight face, it would have been okay to pad those contracts as long as all the work was done. So if their lawyers try to get up here and say the same thing, we ask that you reject it.

Now, leave it to Mr. Dunn to put all together for you.

(Recording plays.)

As I mentioned earlier, his reference to 150 large is \$150,000 that Starzecki is still owed on his kickback payment.

Notice also that he says, on my deal on my neighborhood home. As we heard from Mr. Spina, the SML Bed-Stuy project was specifically a neighborhood home project. You heard a lot about the neighborhood entrepreneurs program and it gets confusing because we are all talking about neighbors and neighborhoods but this is a separate program. So when Mr. Dunn got up there and testified that 150,000 was from the Lexington Avenue project, that wasn't a neighborhood home project. This directly contradicts him.

Now, you also heard Wendell Walters testify that

Dunn was always after him for money and that he was explicitly

Summation - Posa

complaining to him that Bob Starzecki wasn't living up to his commitments, wasn't paying Dunn the money that Dunn believed he was due.

Mr. Dunn and Wendell Walters had corrupted HPD so thoroughly that Dunn thought the role of an Assistant City Commissioner is to police cash and make sure that people get paid the illegal proceeds that they are supposed to be getting paid in his fraudulent and conspiratorial view of the world.

When he says that motherfuckers are going to start talking and the motherfuckers ain't policing the fucking game, who is he talking?

He's saying the people are going to start speaking to law enforcement. When he says start talking, that's what he means, start talking to the cops.

Of course, don't forget, that you also have

Mr. Dunn's full post-arrest statement when he confessed that
he got kickback payments from Bogdan Starzecki.

So we respectfully submit, ladies and gentlemen, that counts two, three, four and five have been proven beyond a reasonable doubt.

The next count is the wire fraud as it relates to kickbacks from George Armstrong. Here, just to take out one piece of evidence, we have Mr. Dunn's own confession. When he himself said that he got money from Armstrong that he wasn't entitled to and that he inflated invoices to pay for it.

That's really all you need to know in terms of his kickback deal that he had going on with George Armstrong. However, we also have a number of checks in evidence that he got from Metropolis Development Corporation which was George Armstrong's company. That's in Government Exhibit 558. He got checks for 20,000, 20,000, 15,000, another 20,000, all very nice even numbers.

I don't know if you've ever gone to Home Depot to buy a refrigerator and other forms of appliance like Mr. Dunn was selling to Mr. Armstrong, but it's kind of weird that they come up to those nice even numbers. Even Mr. Starzecki said he knew enough that when you try to hide payments, you try to make them seem a little bit uneven. Apparently Mr. Armstrong wasn't as sophisticated in the game as Mr. Starzecki was.

Thus, Count Six and Count Seven, proven beyond a reasonable doubt.

The next crimes that are charged against the defendants are engaging in transactions in criminally derived property over \$10,000.

Now, elements one and four are easy. The defendants have already stipulated that the money that was coming on these HPD projects affected interstate commerce. We also know that all the transactions in this case occurred in the United States.

So what were these transactions that involved

Summation - Posa

criminally derived property? Well, you saw a lot of them.

You saw the payments that Mr. Hymowitz was making out of the same account that took the kickback payments to Hymowitz and Freeman's pension fund, putting it away for his nest egg. We saw the payments that he was sending out to himself and to Michael Freeman from that same exact bank account.

You can look through the bank records. There are thousands of pages of them. They are all in evidence. And you will find hundreds more examples of the money -- of this dirty money that was moving in and out of those accounts.

As for Mr. Dunn, this is one withdrawal slip from Government Exhibit 564 that shows that he's making a withdrawal from the account that took the kickback payments that's well over \$10,000.

If you find that the wire fraud counts are proven and that they knew about this fraudulent scheme, you find that they knew that these were criminally derived proceeds, and these counts are proven as well.

Next let's look at the bribery of Wendell Walters, which is charged as a substantive count and then in the racketeering act it is charged as both federal bribery and state bribery.

These are the elements of federal bribery. To act corruptly simply means that you act with an improper motive and that motive is to reward or influence a public official.

There is no doubt here that Wendell Walters was a public official. There is also no doubt that HPD was getting more than \$10,000. We knew from Mr. Spina's testimony alone

As for state bribery, there simply has to be an understanding or an agreement that Walters would have been influenced.

that they were getting 1.35 million just on that one project.

Understanding can just be even a unilateral perception by the defendant. Walters can take the money and say, I am not doing a darn thing for this guy but thanks for the money in my pocket. We know that didn't happen, though. We know that he specifically set up Dunn and Armstrong on the Hancock project. But even if it is just Dunn who is thinking that he is getting something out of the deal, that shows that state bribery has been proven.

Now, you heard Wendell Walters talk about how he set up that meeting at 538 Hart Street with Armstrong and Dunn.

Notably, Bogdan Starzecki also recognized this place.

Wendell Walters testified about how he put them altogether. He said, I am going to give you this project, Hancock project, and I want to get \$25,000 out of this deal.

Once again, you don't have to believe Wendell Walters' testimony. We submit that it was credible. The most important witness really when it comes to the bribery charge is Mr. Dunn himself.

He said on tape, he came at me at my bar. That was at the 538 Hart Street building we just saw. I'm like, come on man. Paid cash, man, come on. I'm not eating five grand more than once.

Remember when Wendell Walters took the stand? One of the very first things he did was point at Stevenson Dunn and said that man paid me \$5,000 cash, five grand. He didn't know that this was being said on tape, the exact same thing by Stevenson Dunn, just like Dunn said he did.

Mr. Dunn also said this.

(Recording plays.)

One little thing that maybe slipped by. I know that Dunn says that he was paying Walters in Walters' BMW car? What was Walters testimony about that night? When they went to Sugarhill in Bed-Stuy? I was driving my BMW. Literally down to the car. He himself, Mr. Dunn, is corroborating Wendell Walters' testimony.

As for the element of bribery, federal bribery, which requires the defendant to be acting corruptly or with a corrupt intent, if this is not evidence that he knew what he is doing was corrupt I don't know what is.

He's saying he's got cameras up. He's already plotting to blackmail or threaten Wendell Walters by claiming that he got the whole thing on tape. If this was just an innocent friend giving another friend \$5,000, why are you

saying that you have it on tape? That's just weird.

Dunn also confessed. He has no love for Walters. I guess because he had to pay him money.

Once again, Walters said that I got \$5,000 from Dunn. If he was going to come in here and say, why not jack-up the amount? Why not say he got 20, 30, \$40,000? He said five thousand, five grand, just like Dunn had said on tape.

For these reasons, the government has shown that Wendell Walters was bribed by Stevenson Dunn beyond a reasonable doubt.

Now, before I get to the last count, which is the extortion count against Stevenson Dunn alone, I am going to stop for a moment and talk about the defendant's testimony in a little bit more detail.

You recall in the beginning of this case

Mr. DiChiara came over here. He pounded on the government's

table. The government has the burden of proof. It never goes

to that table. It's always right here. He is right. There

is no doubt about that.

These defendants had no obligation to testify. But they got up here, they walked to that stand, they took an oath to tell you the truth. They looked you in the eyes and they lied to you repeatedly. You can evaluate their testimony as you would any other witness in this case. They don't get any

Summation - Posa

special breaks because they are defendants and they shouldn't be treated any worse because they are defendants, the same treatment as you would give to any other witness in this case.

Now, I have to say, Mr. Dunn was on the stand for quite a long time. I can probably spend the rest of the day talking about all the falsehoods that he said in his testimony. So I am just going to highlight a few of them for you.

First, he claimed that he had no authority over who was actually going to get to bid on this project. HPD told us who to invite. HPD made all the decisions. Poor developers, we don't get to make any decisions.

We know that's not true. Wendell Walters said that it was up to developers to get that long list from HPD, pick out the ones who they wanted to invite to bid.

But you don't have to believe just Mr. Walters.

Because Mr. Dunn's own witness, Anne Marie Hendrickson said the exact same thing.

Mr. Dunn also provided to the government, as you heard, a brochure from the neighborhood entrepreneurial programs that also said that it was up to the developers to choose the bid list for the general contractors.

So this was demonstrably false.

Next, Mr. Dunn said that he got \$500,000 from George Armstrong. I'm sorry. That George Armstrong got a \$500,000

Summation - Posa

check on the Hancock project a few years after Starzecki's project, the very day it closed. Again, ladies and gentlemen, you have literally thousands of pages of bank records at your disposal. You are not going to find any evidence of a \$500,000 payment to George Armstrong the day it closed.

Then, Mr. Dunn said that George Armstrong ripped him off because he didn't even start working for four months after the closing.

Do you remember the look on Mr. Dunn's face when Mr. Capozzolo presented him with the very first requisition from Hancock that was from July, less than two months after the closing, for work that had already long begun? There was no four-month delay. That was a provable and demonstrable lie by Mr. Dunn on the stand.

Mr. Dunn also concocted this very convoluted story.

I am going to see if I can try to summarize it here.

I believe what he was saying was that Mr. Dunn's subcontracting company with Rodney Rasheed, New World Development, was doing work for MCR on Lexington Avenue. MCR didn't pay them. Rather than hold the money back from that contract, even though SML controlled the purse strings, Dunn told Starzecki that he could wait until another project to pay it back. But then when that project was over, Starzecki gave the money not to New World but to 334 Marcus Garvey.

Now, I've got to say, I am confused just saying it.

We heard him testify for more than one day and this story makes absolutely no sense.

How do we know this story is a lie? First, as we saw from the contracts themselves, if a subcontractor in one of these construction projects isn't getting paid, they can just file a mechanic's lien against the general contractor. The developer can see that lien and say, GC, I am not going to pay you until you take care of this sub.

In this case, Mr. Dunn was also the developer. So he certainly could have just kept that money for himself if it was a legitimate debt.

Do you remember what happened when Mr. Dunn was confronted with those provisions in the contract, the contracts that he signed? Oh, I didn't read those. That was up to my lawyer, Lee Hymowitz. I didn't know what was in there. Really? Are you kidding me?

This is a guy who went and he threatened a kid in college at his summer job to get back the money he was owed from George Armstrong. You don't think he is going to go through the construction contract if it is a real debt and find out how he can get paid for it?

You know who the best witness was to Mr. Dunn's lies? That was Rodney Rasheed, Mr. Dunn's own witness.

Again, I can't say this enough, Mr. Dunn didn't have any obligation to put on any defense case. But he chose Rodney

	Summation - Posa 2195
1	Rasheed and he put him on that stand.
2	Rodney Rasheed said yes, New World Development, we
3	did some work for Starzecki. Remember, Bogdan Starzecki
4	didn't deny on a different project Mr. Dunn had done some
5	subcontracting work for him. And Starzecki made his payments.
6	He didn't say anything about Bogdan Starzecki owing his
7	company \$150,000. Also, he said that I made those payments to
8	New World, which is what would make sense for a legitimate
9	transaction. The company that does the work gets paid for the
10	work. Mr. Rasheed didn't say that that money was going to
11	334 Marcus Garvey Corporation.
12	Now, let's also look at this testimony from
13	Mr. Dunn. First, it is demonstrably false. We have Mr. Dunn,
14	as we just saw on tape, describing in vivid detail down to the
15	very type of car Wendell Walters was driving, the scenario in
16	which he was paying him \$5,000. More importantly, this
17	testimony is absurd.
18	Did you ever bribe Wendell Walters?
19	No, I did not.
20	Did you ever pay Wendell Walters any money?
21	Yes.
22	How much money did you pay him?
23	\$5,000.
24	\$5,000 for what?
25	He never explained what that \$5,000 payment was for.

What was it for? He admitted that he paid the \$5,000 but it wasn't a bribe?

That is absolutely not a reasonable way of looking at Mr. Dunn's testimony.

Now, Mr. Hymowitz's lies on the stand were a little bit more carefully constructed. Not surprising, given what a very careful man he has been from the beginning of these schemes. He was very scrupulous about not signing any of the contracts, trying his best not to get his name on any paperwork, except we saw that one signature card that he had no way of explaining rationally other than saying that he lied to the bank when he called himself the vice president.

Let's listen to this one recording that he has with Special Agent Richards.

(Recording plays.)

Listen to how suspicious he is. Oh, is this civil or criminal? Is this civil or criminal?

Remember, at this time Bogdan Starzecki had been under public indictment for two years. We know from his testimony that he had a conversation with Stevenson Dunn about it. We know from Wendell Walters' testimony that Walters and George Armstrong knew about it.

Is it really reasonable to believe that Hymowitz and Freeman didn't also know that Bogdan Starzecki, their own contractor, had been indicted two years earlier? That's not

reasonable.

This is a man who is scared. He knows he's dealing with a dirty contractor, who was indicted two years earlier, and he's trying to find a way out of it, and he's fishing for information. But as we saw on the stand before you yesterday, Lee Hymowitz's lies eventually unraveled as well.

Now to get back on track with the charges in this case. This is the final charge, home stretch, extortion, Count Eleven.

Now, the elements of extortion require that a reasonable person would believe or feel fear that they are being intimidated.

You don't even have to find that Anthony Armstrong or George Armstrong was actually afraid. You just have to find that Mr. Dunn intended to instill fear. But here we know that Mr. Dunn really did scare the living daylights out of poor Anthony Armstrong when he took the stand.

Here is just a little bit of his testimony.

Do you recall his testimony? I submit, ladies and gentlemen, that everything about Anthony Armstrong's testimony is genuine and sincere. His description was so vivid, it was like it just happened yesterday. Why? Because this was a memorable event for him. This is not somebody who gets threatened every day.

Anthony Armstrong was 100 percent consistent in his

testimony on both direct and cross-examination.

Now, I expect that the Court will also instruct you on the motives that the different witnesses may have to lie versus telling the truth. What motive does Anthony Armstrong have to come in her and lie to you? This is simply an innocent victim who was in the wrong place at the wrong time.

Now, I know that Mr. Dunn didn't say a single word in his testimony about his encounters with Anthony Armstrong, not a word. I submit, that's because Anthony Armstrong's testimony was just too powerful to overcome. Plus, we have the rather inconvenient fact for Mr. Dunn, at least, that he confessed to it. He admitted that he threatened and used an angry tone when talking to Anthony Armstrong. He admitted that he's got connections -- that he told Anthony Armstrong that he's got connections to people from the Marcy Projects and that he said that as a means of intimidation.

Anthony Armstrong had no idea that this is what Dunn had told Special Agent Richards after his arrest.

Mr. Dunn in his confession also explained what gave rise to this dispute. He complained that Armstrong had given him a check that bounced. You can see in there in evidence the bank statements that show that in fact Armstrong did give him a check that was bounced and that it was returned for insufficient funds.

But as the Court will tell you, it doesn't even

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matter whether or not Dunn had a right to that money. In our society, you just can't run around threatening to get people shot in front of the Marcy Projects, or anywhere else for that matter, because somebody owes you money. That's a crime.

Finally, we have these text messages that George Armstrong sent to Wendell Walters before George Armstrong was even cooperating. Saying, he threatened my family. He's out of control. Absolutely consistent with Anthony Armstrong's testimony.

We submit, ladies and gentlemen, that the evidence of Stevenson Dunn's extortion of George Armstrong and his family is overwhelming.

With that, the government has proven all eleven counts against all three defendants and all eight racketeering acts against Mr. Dunn beyond a reasonable doubt.

Ladies and gentlemen, these three defendants swindled and corrupted the New York City Department of Housing and Preservation and Development and in doing so they swindled the taxpayers of New York City. They also swindled HUD, the federal government. They have been ripping off the people of New York City for years, for hundreds of thousands of dollars.

Maybe to them \$450,000 isn't a lot of money.

They've got properties in Martha's Vineyard and all over the place. Maybe that's not a lot of money to them.

But if you are somebody in Bed-Stuy, you are a

	Summation - Posa 2200
1	family and you are trying to buy your first house and HPD is
2	putting together a project to sell that house for \$450,000,
3	that sure is a lot of money. That means something. It means
4	a lot.
5	For that reason, ladies and gentlemen, we ask that
6	you convict these defendants and finally hold them responsible
7	and accountable for their actions.
8	Thank you again for your time and your patients in
9	this long trial.
10	THE COURT: Thank you.
11	Mr. Evans.
12	MR. DiCHIARA: Judge, I think I go first.
13	THE COURT: You go first?
14	MR. DiCHIARA: Reverse order?
15	THE COURT: Reverse order. Okay. Fine.
16	MR. EVANS: Your Honor, should we take our morning
17	break before Mr. DiChiara begins?
18	THE COURT: I am prepared to go forward.
19	Does the jury need a recess?
20	No.
21	All right. If counsel don't, let's go forward.
22	MR. DiCHIARA: Judge, in the middle of it, could we
23	have a break then?
24	THE COURT: Yes. That is fine.
25	MR. DiCHIARA: Fine.

THE COURT: You say when.

MR. DiCHIARA: Judge, I have to get the easel, if that's okay.

Members of the prosecution, members of the defense, Your Honor, ladies and gentlemen of the jury, Mr. Freeman, I sat there and I listened very intently to the prosecution's argument because that's what it was, it was an argument. I made some notes and for the first time that I can remember in my career I was glad to hear the prosecutor say that I was right about something. She said that I was right when I pounded the table and that they have the burden of proof.

One of the government's arguments that they made in their summation is absolutely crazy and I don't know where it came from. No one but no one said or argued it's okay to pad a bill. That would never be any of the defenses and she said that we used this as part of our defense. I don't know where that came from.

When you think about that, is that an honest argument by the government?

When I listened to the prosecution's summation, the thing that kept coming to me was, I was saying, they make a very good argument but where is the proof? I heard a lot about Lee Hymowitz, whether he was a partner, whether he is not a partner, whether he was a vice president, whether he was not a vice president, what his role was, did he have a secret.

But what about what you have to decide? Whether they knew that Starzecki's bid was inflated, whether there was a kickback -- very little evidence about that.

What you got a lot of was that Lee Hymowitz is really a partner. But even if Lee Hymowitz is a partner or isn't a partner, you are not going to have one verdict to decide whether or not Lee Hymowitz is a partner.

What you have to decide is whether or not Michael Freeman was part of a kickback scheme and whether he knew, even more importantly, that that kickback was plugged in to one of Starzecki's bids.

We talked about -- and they tried to use part of my opening as their smoking gun is to follow the money. They say that there are two checks. But those two checks that they show, again, relate to whether or not Hymowitz is a partner, when Michael Freeman gets a check and Hymowitz gets a check.

Where is the proof that those checks are connected to a kickback or any kickback?

Where is their smoking gun?

And they make big deal about when the bills were paid by MCR? Do you remember that? But use your common sense. Do you pay your bills all at the same time? Or do you pay one bill today, one bill tomorrow, one bill the next day, or do you take all your bills and pay them all on the same date?

Summation - DiChiara

Was there any evidence that they presented to you, and remember, they have to present the evidence -- if I have to pound the table again, I will -- but they have to present the evidence. They have to show that there is no doubt, there is no reasonable doubt, that what they are alleging, what they are arguing is true.

Did they show all of MCR's payments on March 2nd to see whether or not those were the only three checks that MCR paid that day? No. They didn't show that. They didn't prove that. All we know is that on that day, they sent out three checks but they may have sent out 33 checks. I submit, that they probably did, if it's a company, and if a company like a human being pays all their pills on the same day.

Another thing they said, they waited until the money came in. I forgot which -- they were doing a PowerPoint but they show that the thirty-four-five is paid on January 3rd and then they say, but they also show that Hymowitz and Freeman get in one of their accounts, in their IOLA account, the money to pay Starzecki his requisition on January 31st.

So it's the opposite of what they argued. They -MCR paid them before Hymowitz and Freeman got the money into
their account, and before, however, long it took for it to go
from Hymowitz and Freeman's accounts to MCR. So their
argument that right after they got the money is another false
argument.

Summation - DiChiara

Now, proof beyond a reasonable doubt requires you to be sure that what the government is saying is true. Suspicion is all over this case. I would not say that there is not suspicion. But that's not what you are here for. You are here to see if they have proof beyond a reasonable doubt.

You know, when I was driving in I was thinking about how much time we spend on the case and how much time we actually spend on doing this, 45 minutes that we are going to talk to you in our summation. It brought back a Rocky movie. It reminded me that for every 45-minute fight, you've got to spend 4,500 hours of training. That is what we did in this trial. We spent a ton of time in our training so that you could hear these 45 minutes that each lawyer will give to you.

The prosecution has given you an argument. Remember what I told you. They go first and what happens when you have an inkblot and you see the inkblot? If you are told what you are going to see in the inkblot, 80 percent of the people see that. Well, they just did that. They tried to make you see the witch.

Let's talk about the prosecution against Michael Freeman because, remember, there are three separate cases here and there are three separate people you have to make a decision on.

If anybody needs a break, just give me a high sign because I know that this is not easy and some of us were

Summation - DiChiara 2205 1 unfortunately in the wrong seat and too close to a person that 2 got very sick. So if there is problem, just let me know and I 3 will stop and we will come back. 4 Let's go to what the evidence shows. Four years after 2007 a phone call comes in to 5 6 Hymowitz and Freeman's office. This is 3-T. Remember, I told 7 you that everybody wants to have a smoking gun? All I heard 8 from the government is excuses why they don't have a smoking 9 And you don't convict people because there are excuses 10 why the evidence isn't there. That because -- you convict 11 somebody because the evidence is there, not because there is 12 an excuse for why it's not there. 13 Hymowitz and Freeman: Good afternoon. 14 How are you? It's Bob from MCR Restoration. 15 16 Yeah, Bobby, it's Mike Freeman. 17 How are you? 18 You can listen to the actual tape. Does Mike 19 Freeman's voice when he answers this phone, when he speaks to 20 Bob Starzecki, sound like he's nervous, that he's talking to 21 somebody that he knows is indicted or anything like that? 22 You heard something about an ECF. If you remember, 23 electronic court filing. Well, if there was evidence that 24 Michael Freeman had looked up Bob Starzecki or any of his

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cases, the government would have shown it to you. They didn't

Summation - DiChiara 2206 1 show it to you which proves or which shows that there is a 2 lack of proof. Let me put it that way. I don't have to prove 3 anything. They have do. There is a lack of proof that 4 Hymowitz or Freeman knew that Starzecki was in trouble. 5 If you look at the conversation, it's clear. 6 Yeah, Bob. It's mike Freeman. How are you? 7 Hey, Mike, how are you? How's everything? 8 Good, good. Very good. 9 Bob Starzecki, excellent. 10 Michael Freeman: We moved. We moved. Bob Starzecki: Oh, where are you guys now? 11 12 We are at 30 East 33rd Street. 13 Sound like he's hiding from Bob Starzecki? He's 14 telling him that we moved, our office is now at 15 30 East 33rd Street. 16 Oh, okay. 30 East 33rd Street. Okay. 17 Right. 18 Fourth floor, Michael Freeman tells him. What's 19 going on? 20 Bob Starzecki: You know what, same old, same old. 21 Nothing really much. It's just like economy is killing 22 everybody and everybody is trying to survive. 23 What did Lee Hymowitz tell you when he was on the 24 witness stand? He said that Bob Starzecki always would be 25 complaining about the business, always be complaining about

Summation - DiChiara the business and look, we see it. Even now when he's doing an undercover phone call he's complaining. (Continued on next page.)

2208 Summation - DiChiara (Continuing) This is like the 1 MR. DiCHIARA: 2 economy is killing everybody and everybody is trying to 3 survive. 4 And Mike Freeman says, I know. Mike, I am getting audited by the IRS. And there 5 was a bill a while ago which I actually gave you a check and 6 7 you guys gave me like the retainer. 8 What are they questioning? 9 They are questioning. They are questioning 10 services. They need something that which is going to show the 11 services, what you guys did for me. 12 And Mike Freeman says, Okay. 13 And Bob Starzecki says, I will give you a check number and the date which I issued the check in the amount so 14 15 If you could check your records and see if you you know. 16 could send me the --17 And Michael Freeman says, The breakdown. 18 Let me remind you about Lee Hymowitz's testimony. 19 Lee Hymowitz testifies that he does his bills in a certain 20 He does flat fee bills. He does transactional bills. wav. 21 Michael Freeman, on the other hand, billing practice 22 is to do hourly bills, breakdown bills. At this point, Michael Freeman doesn't know what exists because Michael 23 24 Freeman didn't do the work for Bogdan Starzecki. He knows Lee 25 Hymowitz -- after he makes the call to Lee Hymowitz to tell

Summation - DiChiara 2209 him to do the retainer for Bogdan Starzecki, that was it for 1 2 him. The rest of the work with Bogdan Starzecki was Hymowitz 3 working with him. 4 And Hymowitz goes into great detail telling you the jobs and I don't have to tell you because Starzecki tells you. 5 6 He says, Lee Hymowitz gave me bids. He gave me things to bid 7 That was his testimony which is exactly what Lee Hymowitz 8 testified to, that they were doing something for him. 9 So Michael Freeman at this point doesn't know what 10 exists because he wasn't the lawyer that did the work and he 11 didn't know what type of billing system Hymowitz had done. 12 Bob Starzecki says, The itemized breakdown, I would 13 appreciate it very much. 14 Mike Freeman says, All right. Can you write it down? 15 16 Starzecki says, What are you, I thought you were 17 going to send it to me. 18 Okay, I can send it to you. 19 Do you have the same fax number? 20 Yes, same fax number. Same everything. 21 Did they change their fax number? Were they hiding? 22 Were they running? No. 23 Okay. So this was like it was 2007, one was for the 24 100 and the other one was for, I believe, 34,5. So that's the 25 only thing. What they need the itemized breakdown and

Summation - DiChiara 2210 for. Mike Freeman: Okay. One I think was the retainer fom you. Now, Mike Freeman knew about the \$100,000 retainer.

He didn't know anything about the 34,5. And I think Mr. Sercarz hit it right. I think MCR was a big company and when, when Starzecki first sent out his check, his computerized check, he sent it to the wrong spelling of the name. So that when he then sends out the \$100,000 check to whoever is doing that in his office or in his staff, goes through to see if Hymowitz & Freeman have been paid anything and it doesn't come up because it's under the wrong name and if it's computerized, it wouldn't have popped up. I assume that. I don't know. I don't have to prove it. The government has to prove it.

Okay. Okay.

services for.

we took from you.

Michael Freeman says, I think one was for the retainer that we took from you. One was the retainer for 100,000 and the other one was for 34,5.

I don't have nothing on that one so I have no idea what that was. Starzecki says, I don't know what that was.

Now, think about it. If they're co-conspirators and the whole 134,5 was a kickback, why would he say I don't know what the 35,4 was for? Why would Starzecki say that? Because he knows that it wasn't a kickback. He just doesn't know why

Summation - DiChiara 2211 he paid him 34,5. They don't know why he paid them 34,5. 1 Ιt 2 probably was something more, and sometimes -- there's a 3 principle that usually the easiest answer is the answer. The 4 answer probably was that they misspelled the name. Hymowitz & Freeman first 34,5 got lost in the computer system 5 6 and so they got, they got, checked. 7 So send it to us and we'll have to dig out Okay. 8 our records and see what we got. 9 At this point, Mike Freeman doesn't know what 10 exists. 11 Please say hello to everyone from me. Okay. 12 Okay. I will. Bye-bye. Thank you, sir. 13 Now, that's the first call. Now, there is an e-mail 14 that follows and this e-mail on September 28th which is 15 Government Exhibit 601 has a very important part to it and it 16 comes from Bob Starzecki. 17 If he knew that this was a kickback, he would know 18 there would be no bill but instead, what does he ask Michael? 19 You talk about Freudian slips. 20 Good afternoon Mike. Did you have a chance to 21 locate a bill. Thank you, Bob. 22 When we moved, we threw out our files and 23 billing records we didn't need. 24 The government hopped on this but they left this out 25 and probably at this time, Michael went to Lee and said I sent

Summation - DiChiara

them the retainer, we never billed them after that so there are no records. So Mike, and we moved and any other records that might have existed, if they did because it's, again, you've got to -- you know, when we talk about cases, we talk as if it all happened in front of you. It happened four years ago. They don't remember whether or not there were billing records or not or filed. They didn't know.

So we moved. Some of -- Hymowitz had thrown out some of his files and billing records and we didn't, and we didn't need, but what's critical is Starzecki knows he's taping them. There's a purpose for doing this. Was it, was the -- is the government's argument here we had him taped so that we could find no evidence, so that we could prove that they wouldn't know anything about it so, therefore, we could argue that they, that they actually knew something about it. Does that make any sense?

Of course they taped him because they wanted to get something. They wanted the smoking gun, that it was a kickback. Something that would tie the 134,5 to the Bed-Stuy project and there is a million ways that could have been done. He could have just said, Mike, this was about the Bed-Stuy project. That wouldn't be inculpatory. That wouldn't be incriminating. That doesn't mean anything to anybody that was sitting in. Why didn't he say that? Because he knows he's pulling a scam on them. Starzecki knows it. That's what he

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2213 Summation - DiChiara That's how he's made millions of dollars. 1 does. He pulls 2 He's smart. The prosecutor was right. He's not a 3 good person but he's very shrewd and he knows what he's doing. 4 So what happens? We get the phone call where now Michael knows that there are no billing records. Government's 5 6 7-T, a few days later. 7 Hello. 8 Yes. Lee, how are you? 9 This is after Lee had had a conversation with the 10 accountant who was actually the agent. 11 Lee, how are you? It's Bob. 12 No. It's Mike, Bob. No. 13 Mike, how are you doing? That's Bob. 14 Good, I'm good, Bob. How are you? 15 Bogdan says again, Very good. Very good. I'm just 16 trying to call you to thank you. Lee spoke with the 17 accountant of mine and according to my accountant, that you 18 guys are going to produce the letter. 19 Michael Freeman: Well, what we're going to try to 20 do, I need to speak to our accountant to see what's going on 21 to be appropriate for both your accountant and our accountant 22 so that we can get this done for you. Okay? 23 Because as Lee had said in his conversation, and you 24 can look at his conversation, we're not manufacturing anything 25 that, bills for you. We'll give you what we can honestly say.

This is going to the IRS. It's going to the government.

2 We're going to do what we're supposed to do.

Okay. So that's what we're doing. So we're working on it, Bob.

They're trying to help him. Does that sound like -if they thought he was a cooperator with the government, the
first thing would have been like this. Michael, Hello? Yes,
Lee. How are you? It's Bob. Mike Freeman would have said,
Oh, Bob, I can't talk to you now. Hit, click. That's what
you would have gotten if he thought that he was cooperating
because that's what anybody that's smart would do. They
wouldn't get into a conversation with a cooperator.

So that's what we're doing. So we're working on it, Bob. The truth of the matter is that we just had no records. We get rid of these things. Once we formulate something that works for you and for him and then we'll run it by your accountant to make certain that it's functional. And I skipped a line. Get the money so there's no records but we'll try.

Okay? He's telling him we don't have the records.

Now, what he does and what he's able to do which, again, no one would have ever done if they thought that it was going to be used as possible evidence against them, he sends a letter to Bob Starzecki, but before you look at it, I implanted on to this letter a portion of the conversation from Starzecki, not

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2215 Summation - DiChiara 1 Starzecki, Agent Richards when he was pretending to be an 2 accountant. I know it's a little difficult to see and I 3 apologize, but I'll bring it even closer. 4 All right. Now, this is from GX 6-T. Richards: And this tells you what the rules is. 5 From their standpoint, they're saying, okay, Mr. Starzecki --6 7 he's talking about, they're saying, the IRS is saying --8 Mr. Starzecki, you have \$134,500,000 worth of your money 9 hidden in Hymowitz & Freeman's retainer account. 10 So that's what they think he's up against, that the 11 IRS believes that the money he paid to them in 2007 is 12 actually being held by them for him and that they're hiding it 13 from the IRS. 14 Lee Hymowitz says, That's not -- it went into our regular operating account. 15 16 And remember the regular operating account? The government's big chart. They're going to try to make it look 17 18 like it comes all out of the same pot when it's -- it's just 19 very frustrating. But in any event, the Hymowitz & Freeman 20 Attorneys At Law account, that's their operating account. 21 That's where all their fees go in. All right? These are the 22 accounts that have to do with the Bed-Stuy project, et cetera. 23 That's a different account than the one that they work with. 24 They are lawyers. They do have work. Where did the money go? The money went into their 25

Summation - DiChiara

operating account. They paid taxes on it because it was fees, not traditional legal fees, but fees nonetheless.

Starzecki was a pay to play guy. He wanted to pay to play with Lee Hymowitz because Lee Hymowitz had something he wanted. Is there any doubt about that? This guy paid whenever he needed it.

Now, so, in order to help them or Bob Starzecki,
Mike drafts a letter. He said, You recently requested a
accounting of fees that you paid us in January, March of 2007
in the amounts of 34,5 and \$100,000.

Now, remember, he's taking Bob Starzecki's word for it. He remembers the \$100,000, but he assumes Bob is telling him the truth about the 34,5. The amounts received from you were for services provided to you and your company MCR. They were services. They were earned money. You're not parking, you're not hiding money with us. That's what he's telling Bob Starzecki so he could, so Starzecki could then tell the IRS.

Your payments to our firm were deposited into our operating account and earned during 2007 and reported as income by our firm for the 2007 tax year.

Doesn't that sound like they believed the ruse, this ruse, okay? And if everybody needs to see it, if it's too far away and you need to read it, you can see the ruse.

From their standpoint, meaning the IRS, they're saying okay, Mr. Starzecki, you have \$134,500 worth of your

money hidden in Hymowitz & Freeman's retainer account and they're telling him it's not hidden in our account. We actually earned it in 2007. We deposited it into our operating account and we paid taxes on it.

Those are all facts.

I suggest to you the government has offered you a theory and they're certainly, you can, you know, you can take a lot of facts and you can come out with a theory and you can say that this is what happened, but that's not a substitute for proof beyond a reasonable doubt.

When you -- when the case is finished, you have to be in a situation where there is only one possible theory, not possibly this theory or possibly that theory. What do we know? What do we know? What does the evidence tell us? We know that Bogdan Starzecki was sued in 2005 for violating the prevailing wage laws and underpaying his workers. So we know he cheated working people. This is a fact. This is not something that we can debate, that the prosecution can give a different argument about. This is a fact.

All right. We know that at that time, Lee Hymowitz says, that's when he started, around 2005, 2006, that's when he really started wanting to get involved in my business. We know Bogdan Starzecki had made millions of dollars from HPD and HUD by using a technique that he himself knew about which is pay to play. This is a fact. He wanted a contract, he

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paid Wendell Walters. He wanted a contract, he paid George
Armstrong. That's when he did. He paid to play. This is a
fact. This is not something that the government contests.

By 2007, Bogdan Starzecki knew that the jig was up. He was caught. That lawsuit had now progressed to two years. He was caught violating the prevailing wage law and this is on HUD projects, HPD projects. Okay? In 2008, we know he settles this suit, not with a dismissal but with paying these workers that are suing him \$630,000. This is a fact. We also know that from 2005 through 2007, at the time that he finally retains Hymowitz & Freeman, he is in a situation where he knows that HPD is probably going to have a problem.

If you remember, when Starzecki was on the witness stand, not only did we talk about the lawsuit existing, I actually showed him exhibits, complaints made by the workers to HPD, to HPD. And in 2007, what happens? He engages the firm of Hymowitz & Freeman. This is a fact.

Now, whether the retainer was well drafted, not well drafted, was a draft, was this, was that, we know he retains them in 2007 and we know from Starzecki's lips and from Hymowitz's lips, that Starzecki and Hymowitz were in the process after that trying to get Starzecki work. We also know, and you can look at it because it's an exhibit, Exhibit 600 which is the retainer, there is not one word in this general retainer that indicates it had anything, anything

to do with the Bed-Stuy project.

We know Hymowitz is in a position to introduce Starzecki to non-HPD private work and we know from Starzecki's own lips that he acknowledged it. This is a fact. We know that Hymowitz testifies the purpose of the retainer was so that he could try to expose Starzecki to private real estate projects. It is clear from the testimony and evidence that Hymowitz is involved, and even the government says I'm sure Mr. Hymowitz was involved in many million dollar projects. He was. Why do you think he was attracted to Starzecki?

We know that both Starzecki and Hymowitz, both of them testified to the same thing, that they discussed Hymowitz's private real estate development projects when they meet and Hymowitz even indicates that, at one of the closings, and I think it was the Bed-Stuy closing or it could have been another but I think it was the Bed-Stuy closing, that Starzecki says you've got to work for me. And that was in 2006, towards the middle to the end of 2006 and, lo and behold, early 2007, Hymowitz is working for him.

This is a man, Starzecki, and the government made a big thing about the fact, well, who would pay \$100,000 and not get anything for it. No wonder he wanted his money back.

This is a man that admits he makes donations of \$10,000 to charities just in the hope that he will meet people who can give him work because it's his pay to play. You remember

that? You remember that? He said that. He said he pays \$10,000 donations.

And you know what's even more important? Because obviously, it works for him because he made millions of dollars legally or illegally, the fact is that -- you know, sometimes, he said, some of his projects were legal, he didn't actually have to pay a bribe. Those are the freebies. If you remember, I asked him was that a freebie. And he said yes, it was a freebie.

He donates \$10,000 to what charity? He named a couple of them. Well, which charity is very important here. He donated \$10,000 to Habitat For Humanities. Now, what person sitting at that table is so deeply involved with the Habitat For Humanities? Lee Hymowitz. And is it a coincidence that of all the billions of charities that are out there, that Starzecki decides that \$10,000 would be a good idea to donate to Habitat For Humanities.

Now, I talked to you about the consensual recordings and I want you to listen to all of them, from T-3 to T-7. I'm not going to play them now. I'm not going to show them to you, but if you go through each and every one of those recordings which is their attempt, and I don't care what they say because otherwise it makes no sense that they recorded Starzecki with Hymowitz and with Freeman for a purpose and the purpose was to get evidence and they failed.

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2221
                          Summation - DiChiara
1
              Now, before I go on to something else, Judge, would
 2
    this be an appropriate time for a break?
 3
              THE COURT: All right. Very good. We'll take a
4
    short recess.
5
              THE CLERK: All rise.
6
              (Jury exits.)
7
              THE COURT: Mr. DiChiara, you had said you needed 30
    to 40 minutes and you are just about at that stage. How much
8
9
    more do you have?
10
              MR. DiCHIARA: I listened very intently not only to
11
    the government but also to Your Honor that you would not hold
12
    us to that number, that that was not --
13
              THE COURT: Well --
14
              MR. DiCHIARA: Probably another 30 minutes, Judge,
    20 to 30 minutes.
15
16
              THE COURT: Okay.
17
              MR. DiCHIARA: I'm going to do my best.
18
              THE COURT: All right. Short recess then, Counsel.
19
              (Recess taken.)
20
              (In open court; outside the presence of the jury.)
21
              THE COURT: Okay. Is everyone back now?
22
              MR. EVANS: Yes, Your Honor.
23
              THE COURT: Okay. Let's tell the jury.
24
              (Jury enters.)
25
              THE CLERK: Thank you. Please be seated.
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1 MR. DiCHIARA: May I proceed, Your Honor?

THE COURT: Yes.

MR. DiCHIARA: Welcome back, ladies and gentlemen.

Let's get back to the case against Michael

freedom -- Freeman. A little Freudian slip there. But maybe
I should say let's get back to the lack of a case against
Michael Freeman because remember when I opened, I told you
that there were three main cooperators: Bogdan Starzecki,
Wendell Walters and George Armstrong.

Wendell Walters testified and what did he tell you about Michael Freeman? That he hardly knew him, hardly met.

There is no evidence that Michael Freeman and Wendell Walters did anything that the government can point to. This is a fact.

George Armstrong does not even testify. All we have is his conversations on the phone.

The requisitions. We've had so much about the requisitions I don't know that I have to go into it but I will just because the government argues that they are false, but we know that they are signed by an architect who reviews the work. They are checked by an HPD engineer before they are paid. HUD sends their own construction analyst to make sure the requisitions are correct before they are paid. These are all facts. And Spina, if you pull my cross-examination of Spina, he talks about Section 9.8 of Government Exhibit 210

which is the memorandum of understanding between HUD and HPD and it tells you all of the safeguards.

So, their argument cannot be that the requisitions, you know -- and I think that there's a whole bunch of them, 109, 108, 107, A, B, C, A, B, C, A, B, C, by the way, none of those requisitions shows the subcontractors so there would be nothing on a requisition that would say that any money was being paid to Keystone or one of Wolitz's firms who was a subcontractor of Starzecki or Koczon or even Marcus Garvey.

None of those invoices would be attached to the requisitions and if you need to look at it, you can pull, they are, like if it's 109, for example, 109C. If you pulled the C part, you could see everything that's itemized on a requisition. And, you know, don't spend a lot of time on it. Or do -- I mean if you chose to, but what you'll find is that it just tells you that we needed this much for construction of windows or this much money for moving people out, but it doesn't tell you anything about the subcontractors.

So, when Michael Freeman signs a requisition which they like to say over and over and over again as if doing your job it somehow implicates you in a crime, remember, unless Michael Freeman knows that the bid is inflated and unless Michael Freeman is getting a kickback from that inflated bid, there's no crime.

There's no crime in signing the requisition.

Summation - DiChiara

Otherwise, the architect -- remember that nice young man that came here and testified, the architect? I forgot his name. I have it in here and I'll get to it. But he signed -- he tells you he goes to the project, he signs it. If 10 percent of the work is done, they signed the requisition so that they get paid for 10 percent of the work. If 20 percent is done, they sign it. I mean, Michael Freeman doesn't have control over this.

What is the government's case against Michael Freeman when we strip it of everything? It's the word of Bogdan Starzecki. And whether you can accept his word knowing that he's got a motive to lie, he wants that 5K letter, which is just another form of paying for play, and whether you can believe his word under those circumstances beyond a reasonable doubt because that's the only evidence against Michael Freeman.

You have to decide is Bogdan Starzecki's testimony of such a convincing character that you would not hesitate to rely and act upon it in the most important decisions in your own lives. If Bogdan Starzecki told you something and you had to depend on it in your own life, would you? Because that's what you need to do to convict Michael Freeman.

I told you the burden of proof is on the prosecution. It never shifts. I told you I could sit and face the wall, never ask a question, and the burden -- and

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Summation - DiChiara

that's when I banged the table, by the way, and the burden would still be on this table, on this table to prove each and every element of each and every crime beyond a reasonable doubt and that the essential elements which all of the charges flow from is that he knowingly and willfully and intentionally was part of a scheme to defraud and the only way they can do that is through their witness Bogdan Starzecki. Wendell Walters gives them nothing. George Armstrong gives them nothing.

And I told you if the witnesses testified consistently with what they said in the past, in their proffers, remember what a proffer is. Before the witness ever gets to be a cooperator or ever gets to get on the stand, the government interviews him but they don't interview him alone. He has lawyers. They discuss it. They know what the charges are.

Starzecki was arrested in July of 2009. He doesn't have his first interview, his first proffer until April of 2010, nine or ten months later. And in that, in those proffer statements -- first of all, let's do it this way.

At trial, he says, to the best of his new recollection -- his new recollection because it's different than his proffers, okay? Because Wendell Walters in his proffers was consistent. That's why I didn't have to ask him any questions. He said he had nothing to do with Michael

Summation - DiChiara

Freeman. George Armstrong, I never had to ask him any questions and I submit to you that a good argument could be made that if the government thought that George Armstrong could help, he would have been here, and the fact that he's not here should be considered by you.

Bogdan Starzecki says now at trial for the first time that in the content of his conversation -- and, remember, this is not even an exact conversation but rather his recollection of what he thinks the conversation was about, it's his interpretation of a conversation with Michael Freeman -- that he wants to pay some of the money he owes Dunn to the Hymowitz & Freeman law firm. That's in a nutshell basically what he says.

His excuse is ridiculous. He says that he did not want to pay a large amount of money to one subcontractor.

Remember him saying that? I don't want to pay all that money to Marcus Garvey. We know from other evidence that this is a lie since he paid other subcontractors much more than \$450,000. In fact, he paid them millions of dollars.

Keystone, run by Joseph Wolitz, his partner in crime in the prevailing wage fraud, he paid millions of dollars to that subcontracting company. Why wasn't he afraid to pay millions of dollars to that subcontracting company?

He paid millions of dollars to Cyberpol run by Koczon. The person, Koczon, if you remember -- I mean,

Summation - DiChiara

there's so much here, I feel like I can go on for days. He cashed over \$1 million worth of checks for Starzecki, all in small denominations, and gave him phony invoices on each and every check all to cheat the IRS and whoever else he needed to cheat.

And this guy, Koczon, helps him, secret money to Panama. And the gall of the man. He's sitting up there and he's still going to fight over whether or not he should forfeit his Panamanian properties when we know, without a doubt, that all of those properties were earned with illegal money. He's still negotiating with the government. He hasn't forfeited one penny of that the Panamanian property.

Is this the kind of man that is scheming even as he cooperates, is this the kind of man, his word is what's going to convict Michael Freeman?

There is a fundamental failure of proof by the government against Michael Freeman. And they even made a mistake in their evidence. Even if that story, that ridiculous story -- by the way, the first time he proffers in April of 2010, he doesn't mention one word about a \$450,000 kickback to Steve Dunn. Not one word about it. Excuse? Oh, we ran out of time.

They talked about a dozen different items. They talked about Wendell Walters, \$250,000. They didn't have time for the most important, the biggest payoff that he would have

talked about? The biggest kickback, the \$450,000, he didn't have time for. I mean, is that, is it believable? He had nine months to prepare for that proffer. Wouldn't that be like right out of his lips? Ladies and gentlemen, I paid \$450,000 to Steve Dunn or I tried to.

And how many months is it? From April of 2010 to November of 2010, he goes to his second proffer and what does he say? Now he did have a conversation with Steve Dunn about \$450,000 but he had a conversation only with Steve Dunn, no mention of a conversation with Michael Freeman. He doesn't know how he got his check. He doesn't know how he got the retainer. He doesn't know, he doesn't know, he doesn't know. But at trial, he knows the date, the time, the month, what color eyes the secretary had that put it on his desk. I'm being facetious, but I mean isn't it a little too contrived? Is that the kind of evidence that proves guilt beyond a reasonable doubt?

Remember, this is not my evidence. This is the prosecution's evidence.

(Continued on next page.)

BY MR. DiCHIARA: (Continuing)

MR. DiCHIARA: Even if you take his statement that he wanted to pay some of the money that he owed Dunn to Michael Freeman, he doesn't make out the crime. Why? Because that might be a kickback, but there is nothing that he said or testified to that indicates that he ever told Michael Freeman that this kickback had been disguised in my bid, which is what you really have to decide; I mean, whether or not HUD or HPD was defrauded. And does Michael Freeman knowingly and intentionally know it? And there is no evidence. What they want you to do is, he told Dunn, so you are showed to guess that Dunn told Freeman. Why? Because like the Government's argument, it's an argument, and it's possible, but it's not proof. And we need proof beyond a reasonable doubt.

And they make a lot about the fact that they claim see, Michael Freeman said nothing, that shows he knows what happened. The way I remember his testimony is Starzecki claims that he was alone with Michael Freeman at a job site.

Now, picture yourself with a person who tells you I'm going to pay you part of the money that I owed another person.

Would you stay silent? Now, you're a co-conspirator, would you stay silent? Wouldn't you say, oh, you are, how much you paying me, when am I getting it, what denominations are you going to give it in, are you going to send it to me a check or are you give me cash, maybe we should

Summation - DiChiara

discuss how we get this money, does Hymowitz know about this? Wouldn't you say something? You're supposedly alone. It doesn't make sense. The conversation doesn't make sense and it doesn't make sense because Starzecki made it up and he made up because he didn't mention it in April of 2010, and he didn't mention it in November of 2010 when he was prepared to sell himself to the Government to pay to play for his 5K letter.

And it wasn't after either one of those proffer sessions that he was given a cooperation agreement. He doesn't get a cooperation agreement until a year later when all of a sudden now Michael Freeman is in the conversation. The case against Michael Freeman depends upon the credibility of a known liar.

Oh, one other thing. It's not even my issue, but I mean, it goes to the lack of credibility. The story about Dunn telling him listen, if you don't pay me, I'm going to have all the other contract -- if you pay me, excuse me -- I'll go ahead you get you the bid because I'm going to have all the other contractors bid high. What contractors? Did you hear one piece of evidence as to who these contractors were? Would Stevenson Dunn -- it doesn't make sense that a person would go to people he doesn't know, because we have no evidence in this record and you can only make a decision on evidence. Would Stevenson Dunn go to people that he doesn't

Summation - DiChiara

know and say listen, I want you to put in a high bid because I want this other contractor to get this job?

And he's got to do that four or five times because we know that the pool is somewhere between four and seven people. Does that make any, any, any sense in the real world? Since there isn't evidence and we have to go on argument, because that's what this case is all about, it's argument between the lawyers, it's not based upon the facts because there are no facts that support the guilt of Michael Freeman, does that make any sense? Does that make any sense at all? Think about it.

If there were contractors that were in on doing this, wouldn't Agent Richards tell you who they were? And if he didn't tell you who they were, it's because they don't exist. Or if they do exist, they failed to prove it.

Whatever way you want to look at it there is a fundamental lack of evidence against the defendants.

I'm trying to, one of the advantages of dealing with me is that even if you see a lot of pages, I jump around so we can go a little faster than usual.

I told you, it's a simple case because it's only dependant about one witness and that's Bogdan Starzecki. We know that he pays to play. We know he was in trouble with HPD since he was being sued. We know that there were complaints filed by the workers to HPD against him. He knew the suit had

Summation - DiChiara

merit and that's proven because he settles the suit and pays them \$630,000. We know he finally pleads guilty to violating the fair prevailing wage law and we know he needed work, so he retains Hymowitz.

Now, you may think that the retainer is high, but when you're dealing in the kind of numbers that Starzecki is dealing in, it's a pittance. He throws \$10,000 at a charity just for the purpose of hoping to meet somebody that might help him. This guy deals in millions. Millions of millions of dollars. In twenty years, pretty good for a Polish immigrant. And as I said, if we needed any other evidence, the temerity, the gall, to be caught red-handed, to be cooperating with the Government and still trying to negotiate to keep your Panamanian properties.

No matter how the Government tries to dress up, the simple fact is that this one man, Bogdan Starzecki, is a liar. He has lied to the Government in the past, he's pled guilty to lying. I mean, how many people actually plead guilty to lying? This guy pled guilty to lying. His motive in all of his crimes was making money. He's fighting for his life now. He's fighting for his freedom for a 5K letter. He knows pay to play has worked in the business world. He knows that it might work in the criminal justice world. He's a convicted felon facing 105 years; not a couple days, 105 years and he hasn't spent one day in jail. Shrewd? The guy's a genius.

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Summation - DiChiara

And by the way, the Government said he was so forthright in his answering. Did you see him try to dance around the fact that he knew that the workers on this job were being paid less than what they were supposed to be paid because he knows that that's something that ordinary people wouldn't like? Well, it was my sub-contractor, it was my sub-contractor. But he pled guilty to it. He had to tell the Judge that at the time that they were being paid, he knew this weren't getting their fair share. But it took me, it was like pulling teeth for me. We actually had to have a side-bar with regard to my cross-examination.

MR. CAPOZZOLO: Objection.

THE COURT: Sustained.

Move on.

MR. DiCHIARA: All right.

Now, at the time at the end of my summation, unfortunately, the rules are that the prosecutor gets one more chance to argue to you and I really believe in this ink blot stuff, you know, and I don't want you being back and forth, back and forth. Think. After the prosecutor argues, where is the evidence? Don't tell me a good argument, don't give me a good story. Show me the evidence and if the evidence is that now Starzecki says he had that conversation, remember the credibility of Starzecki. Remember that Starzecki on two prior occasions, when he was talking to the agents, when he

VB OCR CRR

Summation - DiChiara

wasn't even in a courtroom, when he was telling them what he did to try to get his -- he never mentioned having a conversation with Michael Freeman. Again, I was going to say freedom. Think of what arguments I might come up with if I had a chance to argue one more time.

Ladies and gentlemen, I apologize for going longer than I had anticipated. I said that we train 4,500 hours for 45 minutes and I think I went way past 45 minutes and I apologize for that. And I appreciate the close attention you have paid because it's obvious.

I'm asking you one last thing. Stevenson Dunn is on trial and he made a statement. The effect of that statement to Michael Freeman is nothing. The Court has already told you. You have to decide this case, not on post-arrest statements of Stevenson Dunn. And the circumstances, I'll leave that to Mr. Evans to explain to you, the circumstances under which those statements may or may not be true or what. It's irrelevant. They mean nothing in the case against Michael Freeman.

You know, during the trial, and this is the last part that I have to tell you because I have to say something to you because I sort of opened on the fact that Michael Freeman was my strength. But as I sat in my chair, way at the end of the table over there and I watched the Government's case, and I realized that they haven't proven anything against

Summation - DiChiara

Michael Freeman, I made a decision to put on no case.

Now, that's a tough decision, especially, I mean you're a lawyer, the other lawyers put on cases and you're sitting there and you're saying to yourself how does it look, I don't put on a case. I mean, but I remind myself and I'm reminding you, the prosecution has to prove the case beyond a reasonable doubt. I can face the wall and when other defendants testified, I saw that you were very, very attentive, but the decision to put on no case is probably the most difficult decision a lawyer has to make in a trial because it's all on him.

A very famous lawyer once said the real genius in trial work is knowing when to be silent, even when you want to speak. There was a man by the name of Pindar. He lived 518 B.C. to 438 B.C. Think of how long this knowledge and this wise advice goes. And he was quoted as saying often, silence is the wisest thing for a man to heed. They haven't made their case against Mr. Freeman. They have a problem with their proof or should I say they have a problem with their proof. Please, follow the instructions of the Court, think of the presumption of innocence, think of how high-powered and high-quality evidence would be necessary to overcome a presumption of innocence and think that the Government just failed to do it in the case against Michael Freeman. They are missing a critical element of proof.

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2236 Summation - Sercarz Ladies and gentlemen, I guess, thank you for your 1 2 time and I appreciate the attention that you gave me because I 3 could see that you listened to me and that's all any lawyer 4 would ask for. 5 Thank you very much. 6 THE COURT: All right, thank you. 7 Mr. Sercarz. 8 SUMMATION 9 BY MR. SERCARZ: MR. SERCARZ: Your Honor, Ladies and Gentlemen of 10 the Jury, would the Government do me the courtesy of putting 11 12 back up the flow chart demonstrative? 13 MS. POSA: That one? Sure. 14 MR. SERCARZ: No, the demonstrative with the arrows indicating where the money went, up on the computer. 15 16 MS. POSA: My PowerPoint presentation? 17 Yes. MR. SERCARZ: 18 THE COURT: Green and yellow, I believe. 19 MS. POSA: Do you want the progression of the money 20 going in and back out? 21 MR. SERCARZ: Yes. 22 MS. POSA: Or the one with all three? 23 MR. SERCARZ: Thank you. 24 Imagine for a moment that you're walking home from court tonight, at night, in the dark, on a deserted street and 25

you come across a guy standing under a street lamp, and the guy is obviously chagrined, and he's obviously looking for something.

And you walk up to the guy and you say, sir, can I help you with anything?

And he tells you, you know, I've lost that thing in life which is most precious to me.

And you say, well, maybe there's something I can do to help you find it.

And he says, I sure hope so.

And you ask him where, where was it the last time you saw it?

And he points away from the bright light that illuminates some small corner of the street over to a darkened section far away from where he's looking.

And you say to the gentleman, sir, if the last place you saw it was over there, then why are you looking over here?

And he looks at you and he says, because the light's better over here.

Ladies and Gentlemen of the Jury, they've collected their bank records, they've collected their checks, they've collected their ECF filings, they've collected their trial transcript, they've given you PowerPoint, they've given you sound and light and thunder. This is a case about knowledge and intent. It's a case about two checks and it's a case

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Summation - Sercarz

about when Lee Hymowitz got off the phone with Michael Freeman, what did he know about those checks. Did the Government prove to you beyond a reasonable doubt that Lee Hymowitz knew that that was kickback money? That's what this case is about, but the Government says stay here, the light's better over here.

The Government says if you want the smoking gun, follow the money. Well, Ladies and Gentlemen of the Jury, money doesn't talk. Money doesn't tell you where it came from. Money doesn't tell you where it's going. Money doesn't tell you who sent it. And money doesn't tell you why. But they say stay here, dontcha know, because the light is better over here.

On November 16th, 2010 Bogdan Starzecki met with agents and prosecutors. At that point, as Mr. DiChiara has pointed out -- and I'm not going to go over it in great detail -- he had been arrested for his role in the prevailing fraud wage fraud scheme in July of 2009. He'd been indicted on multiple counts of wire fraud, each carrying a 20-year term, false statement counts, each carrying additional jail time and he calculated his odds -- the man everyone seems to agree is a shrewd businessman -- and he decided that his best move is to try and talk his way out of this.

He knew the Government would examine his banking records. He knew that those records would disclose his

involvement in paying bribes and kickbacks and he knew he had to give it up if he was going to try and talk his way out of this.

In April of 2010 he began to describe the bribes that he paid to public officials.

On November 16th, he again met with prosecutors and in this interview, on this occasion, he was asked to produce his vendor balance sheets, those documents, and three of them were offered into evidence by me. I'm going talk to you about them after lunch. These documents that indicate as to the contractors -- I'm sorry -- as to the developers, how much money was paid, when it was paid. He knew he was going to have to talk about it with regard to each and every developer that was under investigation.

These Quickbooks generated vendor detail sheets.

Sheets that would have disclosed payments for something as benign as a hammer and a nail, construction supplies or sheets that would have disclosed graft payments to various developers.

(Continued on following page.)

Summation - Sercarz

MR. SERCARZ: He supplied the agent with documents, including Hymowitz Exhibit A and C and at the time that he produced the documents he testified that he cannot recall the two payments to Hymowitz and Freeman. He couldn't recall what they were about. He thought that he had invoices to substantiate those payments that had been sent to him by Stevenson Dunn, interestingly enough, by Stevenson Dunn and he couldn't recall how he got them.

He said to the agent, I can't even recall how the checks got to Hymowitz and Freeman. But he told the agents that Hymowitz and Freeman did no legal work on the Bed/Stuy project. That's what he told them on November 16. He admitted, as Mr. DiChiara told you, that at that meeting he told them nothing about a meeting with Michael Freeman, about discussing a kickback scheme with Freeman, about seeking a retainer.

Subsequently he was able to find a copy of the retainer agreement. A copy of the retainer agreement. He is supposed to have a signed original. He got it by fax. He signed it and he faxed it back. He produced a copy of the retainer agreement.

And at some point thereafter in his effort to qualify for a cooperation agreement to obtain a holy grail that covered a substantial assistance letter the story begins to emerge. When does the story emerge and how does the story

ANTHONY M. MANCUSO, CSR OFFICIAL COURT REPORTER

emerge? It emerges as he is producing the documents and as he is called upon to explain them and the government stood here on their opening summation and they told you if he's already given up the likes of the Wendell Walters why does he have to give up Mr. Hymowitz? Why?

I'll tell you why. Because for every statement he makes he implicates himself further. The odds that he is going to go to jail for a period of time unless he gets that substantial assistance letter, those odds increase. For every bribe, every kickback in which he implicates himself the odds get higher and higher and he doesn't know whether the government is going to accept his rendition about why these particular payments went to these particular developers.

That's the game that all of them are playing and it was under those circumstances that the story first began to emerge. This is part of the money that I owed to Stevenson Dunn. But, ladies and gentlemen of the jury, money doesn't talk. Money doesn't tell you where it came from. Money doesn't tell you whether the payments to Marcus Garvey were for the same purposes as the payments to Hymowitz and Freeman. But never mind any of that. Just stay here, ladies and gentlemen of the jury, because the light is better over here.

As I told you on my opening statement this is the day that the case against Lee Hymowitz went off the rails because the government abandoned the neutral search for

evidence wherever it may lead. They changed from investigative mode to prosecutive mode. They overlooked the fact that as to Lee Hymowitz no evidence that he asked for, sought for, received a penny in connection with the Lexington Avenue project. No evidence that he asked for, solicited in any way, received a penny on the Hancock Street project. Starzecki told you -- more about this after lunch -- that it was his idea to start putting money into the Hymowitz and Freeman account. Not the developers Hymowitz and Freeman. His idea to make the change because for reasons that he describes he was becoming nervous about putting the money into Marcus Garvey corporation.

Don't pause too long over whether that makes sense. Don't pause too long about whether a criminal is going to go up to someone not knowing whether they were involved in the criminal activity or not and alert them that he was already kicking back to one developer and would like to know whether he can put more of that money in the account of a new developer. Don't pause too long over that because we got a flow chart. We can show you how much money was collected and when. Stay here they say because the light is better over here.

The witness had a bad prior history of deceit and every reason to lie and worse. The story begins to emerge only after he begins to unearth his own documents. Life is

Summation - Sercarz

complicated. The world is imperfect. Sometimes things don't line up the way they do on a flow chart, ladies and gentlemen of the jury. But stay here, they beg you, because the light is better over here.

And if any proof is required that as of November 16, 2010 the decision had been made not to investigate further but to prosecute and that the decision had been made before those telephone calls were made to the Hymowitz and Freeman law firm, consider the answer that Special Agent Richards gave when he was asked the question: Why didn't you simply talk to Mr. Hymowitz over the phone? Why did you employ a ruse?

And the answer he gave is because he was a sophisticated guy who had done criminal work and the likelihood was that he was just going to hang up the phone. That's his testimony in substance. If I've misquoted it, forgive my, it at 1234 of the transcript.

Look. There are law enforcement, exigencies that cause agents to make arrests rather than interviewing subjects of investigations and I don't quarrel with any of them.

That's not my point. My point is very simple. That answer only makes sense if you presume that Mr. Hymowitz is guilty and will attempt to shield his guilt in the conversation.

Agent Richards may have been right in his calculation. Gee, if I've got a guilty guy on the other end of the phone, forget about hanging up, maybe he'll notify

other people who were involved in the conspiracy, maybe they'll flee. Fine.

But acknowledge this: Before that phone call was made the decision was made by prosecutors. This was not an effort to see where the conversation led. This was a scripted conversation designed to try and extract evidence, to corroborate their version of the case, because by November 16 of 2010 the government was operating on the presumption of guilt.

Ladies and gentlemen of the jury, we operate under a different presumption here in this courtroom. Ever since November 16 of 2010, for three and a half years, they have been operating under the presumption of guilt. Now, we operate under the presumption of innocence. Lee Hymowitz is presumed innocent.

That presumption didn't vanish when he took the witness stand. It remains throughout the trial. It cloaks him now. You will take it with you into the jury room when you begin your deliberations. And it protects him unless and until you find that each and every element of the crimes charged has been established by credible evidence beyond a reasonable doubt.

In order to establish that Lee Hymowitz is guilty of the charge of conspiracy alleged in this indictment the government must prove beyond a reasonable doubt that Lee

Hymowitz knew that there existed a scheme to pay kickbacks to developers, to inflate the bids and to lie on requisitions for payment and armed with this knowledge he joined the conspiracy with the intent to make it succeed.

In order to establish that Lee is guilty of the mail fraud and wire fraud, the government must establish beyond a reasonable doubt that he knew that the requisitions for payment, none of which were signed by him, by the way, contained false representations regarding the cost of the work and that he intended that HUD and the enterprise pay these amounts knowing that they were inflated. That's what has to be proven beyond a reasonable doubt.

Finally, in order to establish that Lee is guilty of unlawful financial transactions, as alleged in the indictment, the government must prove that when the enterprise and HUD made these payments and the developers distributed the money Lee knew that the funds had been generated by means of fraud.

What does the evidence show-- the evidence -- about Lee's knowledge and about Lee's intent? To answer these questions you can't only take the government's witnesses at their word. You can't only look at exhibits and charts. You're going to have to do the hard work of searching for the truth, even if it involves a trip into the dark, ladies and gentlemen of the jury.

In a very real sense the government's investigation

Summation - Sercarz

began and ended with Bogdan Starzecki. Mr. DiChiara talked about it. I'm not going to belabor it. But I'm going to ask you to do this. I'm going to give you a framework for analyzing his testimony. The court is going to tell you when it comes to cooperators you have to scrutinize their testimony with great caution. In view of that and in view of what you know about this gentleman I ask you to ask yourselves three questions and answer them for yourselves before you determine whether to accept a single word of his testimony.

One: Is this a guy who has demonstrated the proclivity to lie?

Number two: Does the cooperation agreement and the circumstances that surround it -- and the circumstances that confronted him on November 16 of 2010 and thereafter -- provide a motive for a guy in his position to lie?

And number three: If indeed there is a motive and this is a person who has the capability, the proclivity of lying, is there a suggestion that he lied about anything in this case?

Let's talk briefly, briefly, about whether or not this gentleman has the proclivity to lie. He came to this country with little or no knowledge of English, with the skills of the a laborer and over a twenty-year period turned himself into a multi millionaire by bribing public officials to get work, generating cash for the bribes by giving checks

ANTHONY M. MANCUSO, CSR OFFICIAL COURT REPORTER

to a gentleman named Kuzcon in exchange for phony invoices and obtaining cash in return. With the cash he paid kickbacks to developers in exchange for bogus invoices to keep the work coming. In order to make the work profitable he used a subcontractor named Wolosz who extorted from his workers a portion of their wages and shared the money I respectfully submit with Mr. Starzecki. And helped him lie about it on certified payroll documents.

To make sure he wasn't caught he bribed a public official named Michael Provenzano to obtain Provenzano's job reports so he and his subcontractors would know how many prevailing wage workers were on a job site on any given day so they could conform their paperwork to Mr. Provenzano's paper work. And any workers on the site they could pay them below the significant wage and not have to worry about the documentary support.

Not content to make his money in this way, he declared the amounts listed on the bogus invoice as expenses and deducted them from his tax. He compromised public officials. He cheated those who worked on his jobs. He evaded his taxes. He lied about it regularly, consistently, over a period of at least nine years. From his first HPD project in 2000 to his arrest in 2009.

And if you think for a moment that he was chasten by his encounter with law enforcement when he got arrested,

consider this: In 2005 the civil racketeering suit is brought and after the case is settled Starzecki stops using Keystone on prevailing wage projects. But he continues to use Mr. Wolosz as a subcontractor with this company Cyberpol, which happens to be owned by his other partner in crime Mr. Kozcon.

I'm submitting the question to you. You're the ones that are going to make the decisions here. Is this a man who has the propensity or the proclivity to lie?

And I can't help but note -- and I'm going to get to this in a little while -- that for this caliber of witness, he gets a cooperation agreement and for Mr. Hymowitz, who put on evidence of his good character, there is a rebuttal character witness named Bibi Sicignano. More about her later.

Did the agreement, under the circumstances presented here, provide a motive to lie? Consider the following sequence of events: July of 2009 Starzecki is arrested and charged with prevailing wage fraud and false statements. He's facing the prospect of spending the better part of the rest of his adult life in jail. By his own admission he reviews the discovery, consults with his lawyers and decides his only chance to avoid this fate is to plead guilty and to talk.

This plea for him is not an acknowledgment of wrongdoing, ladies and gentlemen. It is a business decision for Mr. Starzecki. This is Starzecki deciding whom to pay,

Summation - Sercarz

when to pay and when to seek a discount. As the process unfolds Starzecki has to give up his business records and with that the bribes, the kickbacks, the unlawful financial transactions and as of November 16, 2010 he knows that if he doesn't obtain a measure of leniency he may never see the light of day.

The agreement -- let me see if I have a hard copy of it. Dunn Exhibit H, the cooperation agreement. In order to get 5K 1 relief -- let me put it up on the Elmo. In order for him to obtain the leniency that he so fervently desires, the office, meaning the U.S. Attorney's Office -- not the court, not you, not the defense -- must determine that the defendant has cooperated fully, provided substantial assistance to law enforcement authorities and otherwise complied with the terms of this agreement.

Three things he must do in the disjunctive. He must comply with the terms of the agreement. He must produce the documents when they want them. He must make the phone calls when they want them. He has to cooperate fully. If they feel he's not telling the truth, he hasn't fully cooperated and even if -- even if they feel that he's been truthful and he's gone to all the meetings, if it doesn't add up to substantial assistance, they don't have to give him the letter and all of his good work is down the tubes. It under those circumstances that Mr. Starzecki made his decision about what to say

concerning those two checks for a thousand and one hundred thousand that were deposited into the Hymowitz and Freeman account.

I got the rest of my life in jail over here. I've got to convince them that the assistance is substantial in order to get what I want and I've got to weigh in the balance their incredulity or suspicion if I tell them this is a legitimate payment. Before the documents are produced I can't remember. I don't even remember sending the checks out. After the documents are produced suddenly the story begins to emerge.

And I'm asking you. I'm not telling you. I'm asking you. This agreement is a piece of paper. It's a contract. It's a one size fits all contract for cooperating witnesses. Don't you think it fair to ask if under the circumstances relating to the character of this individual his proclivity and propensity to lie, the clear motive that's provided by this agreement when a man is facing up to the rest of his life in jail, and he's confronted with his own records and he's got to tell them a story that the documents and his desire to gain that coveted undefined goal of substantial assistance, don't you think that can produce exaggerated or false testimony in a case like this?

(Continued on next page.)

MR. SERCARZ: (Continuing) Or do you believe along with the government, ladies and gentlemen of the jury, that Dunn's Exhibit H is some kind of a car wash for the human spirit no matter how dirty when you enter, clean as a whistle when you come out. I'm just asking, ladies and gentlemen of the jury. You're the judges of the facts in this case.

Is there a suggestion of lying?

Does the government have in court a hard copy of Government's Exhibit 600and 109? I'm sorry. Make it 101B.

Very rarely in the career of a criminal defense attorney do you actually have the opportunity to demonstrate objectively the degree to which a witness, given his proclivity to lie and the pressure exerted on him by a cooperation agreement, fabricates or exaggerates testimony.

Here's Government's Exhibit 101B, the requisition certification. Here is the fax strip at the top of the certification.

Here is the hard copy of Government's Exhibit 600, the requisition agreement. Take a look at the fax strip at the top, ladies and gentlemen, as to every page.

MS. POSA: Sorry, Maurice. Can you move that down? We can't see the one underneath. Thank you.

(Exhibits published.)

MR. SERCARZ: Mr. Starzecki's testimony, ladies and gentlemen of the jury, is that he could recognize the fax

Summation - Sercarz

strip on the retainer agreement as being the same fax strip as the one on the requisition that was sent in to secure payment. That was the essence of his testimony. When I asked him about it, he said that he could make out numbers at the bottom, you recall, and thereby tell that it was the same, the same fax strip.

I'm not going to tell you how to react to evidence like this because all I have to do is show it to you. This is not a big point. This is not a momentous, earth-shattering fulcrum of this case, but when you ask the question is this a witness who, under the pressure of a cooperating, a cooperation agreement and the desire to gain his coveted place on the list of those who have substantially assisted, is capable of exaggerating his testimony, well, ladies and gentlemen of the jury, are you going to believe the government or are you going to believe your lying eyes?

He claims he told Mike Freeman, I want to put the rest of the money in your firm. The amount of the kickback, according to Mr. Starzecki, was \$450,000 and yet, the retainer is for \$100,000. He claims he doesn't want to put too much money in the way of a kickback into one company and yet, on the Alexander Avenue cluster, he put approximately 20 checks into the account of PRA Building Materials with a total value of \$300,000 on the Cooper Decatur cluster, approximately 25 checks made out to All Borough Painting and repairs in the

Summation - Sercarz

amount of \$228,200 in the account of Ursis Construction owned by Mr. Koczon referred to by Mr. DiChiara. Over a million dollars. An abundance of checks.

Is it possible that as a result of the pressure imposed by this agreement, what he was facing in the wake of his proclivity to lie or as a result of his proclivity to lie, the witness is fabricating his motives? You're the ones that are going to have to determine that, but most troubling of all, ladies and gentlemen of the jury, is I respectfully submit that the government perhaps unwittingly aided and abetted him in bending his testimony out of all proportion.

Government's Exhibit 600 says, as you're well aware, that the retainer by its terms is nonrefundable. And it was the government that asked him, well, when you saw the words nonrefundable, did that affect your decision whether or not you could go and get that money back. And he said yes. I know they got the documents. I know they got the PowerPoint. I know the light's better over here.

Please, for the sake of my client, stop and think.

If this is a contrived document, if both sides to the document are complicit in a fraud, do you think the language on the agreement that says it's nonrefundable is going to make any difference in whether or not he asks for the money back?

Then on direct examination and, again, on summation, the government takes great pains to note that on one day,

chart and it's here in green.

Summation - Sercarz

March 2nd of 2007, Mr. Starzecki writes three checks, two to Mr. Dunn totaling \$50,000, one to Hymowitz & Freeman adding up to \$100,000, and they get the witness to say 50/50/50 -- I'm sorry -- one third, one third, one third split. 50,000, 50,000, 50,000 split. And they've got it on their beautiful

Stay here, they tell you. The light's better over here. Never mind what's going on at the bottom. Never mind the total amount of money that was paid. Never mind that of the 274,000, the Hymowitz & Freeman law firm got the two checks for 100,000 and 34,500, which I'm going to explain to you later on, and Mr. Dunn got about \$148,000 and I will show you after lunch that there was no evening up. Where's the one third, one third, one third split? But they just want to show you the part that's easy. They just want to show you the part they can illuminate. Stay here, they say. The light's better over here.

The Court will instruct you to scrutinize the testimony of this witness with great care. I just have a question. Is this the quality of the testimony that must convince you, ladies and gentlemen of the jury, beyond a reasonable doubt of the guilt of my client?

You know, ladies and gentlemen of the jury, they had the charts. They had the Power Points. They have the exhibits. They have the ELMO. But there was one thing that

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Summation - Sercarz 2255 1 they weren't counting on, ladies and gentlemen. They weren't 2 counting on you. They weren't counting on your willingness to 3 go beyond the pablum that gets fed to you and to really think 4 and reason it out for yourselves, is this the quality of the evidence that must convince you of the guilt of Lee Hymowitz 5 6 beyond a reasonable doubt. 7 Now, if the Court will allow, Your Honor, after 8 lunch, I'm going to go into whether or not there's any 9 evidence to corroborate the testimony by Mr. Starzecki, I'll 10 talk to you about Lee Hymowitz's testimony and I'll talk to 11 you about whether or not the evidence doesn't support his 12 version of what happened with that money. 13 May we break at this time, Your Honor? 14 THE COURT: Yes, that's fine. Members of the jury, we will break for 15 All right. 16 Remember not to discuss the case. You may go 17 outside for your lunch and just be back so that we can start 18 again promptly at 2 o'clock. Thank you. 19 THE CLERK: All rise. 20 (Jury exits.) 21 THE COURT: Mr. Sercarz, how much more do you have? 22 MR. SERCARZ: I think I'm about halfway through, Your Honor. 23 24 Okay. And you started at? THE COURT: 25 MR. SERCARZ: I asked for an hour and a half.

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Summation - Sercarz
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    told you it was an approximation and I'm trying to stick to my
 2
    timetable.
 3
               THE COURT: All right. You have used 35 minutes so
    far. So if you really need only 35 minutes more, I think we
 4
    should have no problem at all concluding the summations today.
5
    That would be excellent.
6
               All right. Have a good lunch everyone and we will
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8
    see you at 2:00. Thank you.
               (Luncheon recess.)
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               (Continued on next page.)
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	Summation - Sercarz 2257
1	AFTERNOON SESSION
2	(In open court.)
3	(Judge NINA GERSHON enters the courtroom.)
4	THE COURTROOM DEPUTY: All rise.
5	THE COURT: Good afternoon.
6	Mr. Sercarz, we are bringing in the jury.
7	MR. SERCARZ: All right.
8	THE COURTROOM DEPUTY: All rise.
9	(Jury enters.)
10	THE COURT: Good afternoon, everyone.
11	THE JURY: Good afternoon.
12	THE COURTROOM DEPUTY: Thank you, please be seated.
13	THE COURT: We will continue, Mr. Sercarz, with your
14	summation.
15	SUMMATION (Continuing)
16	BY MR. SERCARZ:
17	MR. SERCARZ: You all came back to hear the rest of
18	this, I'm going to take that as a positive development.
19	If we step away from Mr. Starzecki's testimony and
20	search for meaningful corroboration, I respectfully submit to
21	you, you won't find any.
22	The Government's theory is that the alleged kickback
23	demand by Dunn was made on behalf of all three defendants.
24	That's what Starzecki says when he starts to be confronted
25	with his own documents. Agent Richards testified that during

Summation - Sercarz

the course of the investigation the Government subpoenaed bank records from the SML, for Marcus Garvey, from Hymowitz and Freeman. We've now seen additional checks in this case and I'd like to show you something using the Government's summary chart.

I'd like you to focus on the period from April 10th of 2006 to January 22nd, 2007. That's a nine-month period. That's a nine-month period when the only checks that are being paid by MCR, which are allegedly kickback payments, are being paid to Marcus Garvey. First, on April 10th of 2006. Not another payment until money is coming into the coffers of MCR and then a second payment into Marcus Garvey. The total of these two checks comes to more than \$80,000.

This is supposed to be a conspiracy in which all are participants. The Government suggests that this is supposed to be a one third, one third, one third split. So, I suggest again that while the Government bathes itself in the glow of what is present on the face of the checks, maybe, Ladies and Gentlemen of the Jury, we need to go further and ask another question. Is there any meaningful evening-up that is going on during this nine-month period? And I respectfully submit to you that the answer is no.

Now, I asked Agent Richards when he was on the stand about the fact that the Government collected checks, and I asked whether he segregated any checks that showed payments

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Summation - Sercarz

from Marcus Garvey to Hymowitz and Freeman, and his answer at that time was no, and the Government has since offered into evidence some checks collectively marked Government's Exhibit 639, and I respectfully submit that these checks just won't make it.

Victor, if I can get some help, I'm sorry.

These are small checks in denominations like \$2,500, \$2,000, you may recall seeing them on Monday and we discussed them. Another check to Lee Hymowitz, \$2,600. There are checks to Mr. Freeman here as well, again in small amounts with memo entries. Memo entries pertaining to mortgages and fees for something called Odd Couple Management. And I may be incorrect about this, but it appeared that in the cross-examination of Mr. Dunn by the Government, the Government appeared to acknowledge these financial arrangements between Mr. Dunn and Mr. Hymowitz.

Dunn testified on direct examination and Mr. Hymowitz testified that the relationship began with Lee helping Steve to get mortgage money and it continued apace. These checks won't supply that defect in the proof. It won't explain how if it is supposed to be a conspiracy for nine months, one of the alleged conspirators has \$87,000 and there is no evening-up.

A conversation with Wendell Walters, a real conversation, a meaningful conversation, a critical

conversation should have convinced the Government that they were on the wrong track. He was the person at HPD with the most authority and discretion with regard to the three projects at which the SML function as developers. While running the NEP he was directly responsible for the Lexington project and later, in his second incarnation, he had oversight over the Bed-Stuy and Hancock projects and yet the evidence clearly shows that he always had an arm's length relationship with Lee Hymowitz and, for that matter, with Mike Freeman.

The initial effort at an RFQ lists all three defendants. They all wished to become developers. And by the way, we're going to talk a little bit about what the Government portrays as Lee's effort to hide his role as an active developer. I respectfully submit, it just ain't so. Lee testified and I began his direct examination as follows, not quoting but as best I can resurrect it, did you apply to be a developer, did you intend to be a developer, when they didn't let you be a developer did you remain active with the SML.

In any event, they apply the first time and the word comes back from on high that for whatever reason, and it was filtered through too many years for to us the get exact rationale, we don't want all three to be developers. So, Lee steps away.

Later on, Lee re-applies in connection with number

Summation - Sercarz

six, I believe, of the Bed-Stuy project, phase six, round six, I couldn't keep up to be perfectly honest. Again, Lee is turned down and it appears from what we can understand that because of the cap on income -- or net worth, rather -- using the net worth figures for all three put them over the limit because Mr. Freeman inadvertently included his primary residence.

Now, if my client were actively involved in the graft conspiracy that was ultimately funneling money up to Wendell Walters, do you really think they wouldn't have been allowed to re-submit that application and get that part of it straightened out and squared away?

In 2002 and 2003 Walters is looking to finance the renovation of a building on Strivers' Row that would eventually become his home. The Government introduced the fact that it was owned during that period of time by a gentleman named Gregory Pascal. Later on it gets renovated, it gets sold to a guy named Edward Pinckney -- of some basketball fame, by the way -- and then ultimately transferred to Wendell Walters far later on.

But while that property is owned by Pascal,

Stevenson Dunn says why don't you go to Lee and talk to him

about a loan? And Lee goes to the clients that sometimes

loan, I think they call these hard-money loans, if I'm wrong,

chalk it up to my ignorance, to private individuals on

Summation - Sercarz

properties that are not yet developed in, call them burgeoning areas but not yet established areas for relatively high rates of interest.

Now, the Government is all focused on whether or not there is a conflict of interest in Lee Hymowitz being involved in trying to get Wendell a loan when Lee and the SML are applying for these development projects. How about focusing on the burden of proof for a moment and asking yourself this question. If Mr. Hymowitz is actively involved in a conspiracy and seeking to earn the favor of Wendell Walters, what are the odds that he's going to come back with a loan which is exactly what his clients charge everybody else, give us 15, 16 percent for your one-year loan, which Wendell Walters found offensive, according to his testimony.

It was so offensive that rather than borrowing the money and paying interest on it, what he chose to do instead was to get one of his buddies who was doing another renovation and have him siphon \$350,000 out of that one so he got a free sum of money. And it wasn't even a loan toward the renovation of that building. But what is this telling you about Mr. Hymowitz? Look at Hymowitz's relationship with Wendell Walters, Ladies and Gentlemen of the Jury.

And by the way, with regard to this conflict of interest which respectfully is of no moment in this case, Walters wasn't borrowing the money for himself. The building

was owned by a friend and Lee wasn't loaning the money.

Clients of Lee were loaning the money. The Government suggests that this is usury, the rates are inappropriately high. Keep throwing it up against the wall and see what sticks. There's a conflict of interest. There's usury.

What about the fact that while everyone else in the HPD world is throwing money at Wendell Walters, money in cigar boxes, money for trips, money for bribes, Lee Hymowitz is offering him loans at rates that are the same that are being charged other individuals for these kinds of distressed properties. Money that he doesn't want to accept under that circumstance. What does that tell you about the allegations in this case, Ladies and Gentlemen of the Jury?

With regard to the retainer agreement, Government's Exhibit 600. The thought occurs to me that you will ultimately begin your deliberations on Monday, I believe and what we say here, the nuances of what we say may be lost over a three-day weekend. If there's one thing that I ask you to consider while you're hearing the Government's reply summation, one thing that I ask you to consider when you're thinking about this retainer agreement, it would be the following.

I respectfully submit to you, Ladies and Gentlemen of the Jury, that when on one side of this agreement is a man who wants to pay kickbacks and on the other side of this

Summation - Sercarz

agreement are people that are described by the Government this morning as careful lawyers, Mr. Hymowitz is a careful person, then any document which is constructed to hide a kickback is going to be letter perfect; letter perfect so that the document itself doesn't raise any red flags.

When you consider it in the context of a quote unquote, according to Starzecki, invoice to hide a kickback, it just doesn't work. The front page describes a general retainer. All legal services required in the 2007 year in the amount of \$100,000. The second page talks about hourly rates disbursements, payments on outstanding balances. Please, you can review this again on Monday. Page one and page two act as though they've never met and made the acquaintance of one another. And I'm going to it talk to you about Mr. Hymowitz's testimony, but I urge you to keep that fact in mind.

Not only that, but the second page calls for regular accounting statements. Maybe that's worth showing you again. Statements of account will be sent to you on a regular basis. If this document were created to hide a kickback payment, do you think for a minute that Mr. Starzecki wouldn't do what he did with every other contractor in this -- developer in this case and demand the invoices that would have hidden the payments? Or is that going a little too far away from the document into the dark, Ladies and Gentlemen of the Jury?

Sometimes I stay awake at night thinking about the

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Summation - Sercarz

strangest stuff. Why didn't Starzecki provide a signed original? He testified that the document was faxed to him, he signed it and he sent it back by fax. Why didn't he provide a signed original?

Maybe I'm not supposed to torture myself thinking about stuff like that, but the thought did occur to me, for whatever it's worth. You can reject it out of hand, if it's worth nothing. That maybe Mr. Starzecki when he knew he was going to go see the Government looked in the folder under Bed-Stuy for this retainer or in the folder where he kept his HPD documents that were used to disguise kickback payments and when he looked there, he didn't find it. And when he didn't find it, it's because it wasn't there. And you know why it wasn't there. The document had nothing to do with Bed-Stuy or HPD, Ladies and Gentlemen of the Jury.

With regard to the tapes, we went over this as recently as yesterday. I think there are three points worth making about these conversations. First of all, and in connection with everything that follows in the first conversation between Mr. Starzecki and Lee.

Do you remember we did have that retainer with you guys a while ago?

ANSWER: No.

Starzecki, who's supposed to be on script, who's supposed to be extracting inculpatory information, a smoking

Summation - Sercarz

gun, call it whatever you want, refers to the subject matter of the conversation as a real estate deal. Interesting isn't it? And from that point forward in this conversation and in the ones that followed, Lee who does not recall what happened with regard to this transaction talks about his practice with regard to billing.

Now, the Government, which has the burden of proof and acknowledges that it has the burden of proof comes in with bills on one project. One. And suggests that for purposes of your analysis, you must view that one project that he had with the Lutheran Synod as Lee's customary way of doing business and therefore, presume on the basis of that, that Lee's lying when he says that he doesn't do hourly billing or detailed billing.

First of all, he was not the lawyer on that project. Second of all, his method of billing changed as an accomodation to the church. And third, he told you on the witness stand he didn't say he always, always just gives a flat fee. He says except as an accomodation. Not good enough for the Government.

By the time Agent Richards calls, Lee's recollection has obviously been refreshed. He recalls drafting a retainer. He recalls \$100,000 check, but he still does not recall the events that followed. He still speaks of his practice with regard to billing, the looseleaf and tearing out original

Summation - Sercarz

invoices when paid. The Government suggests that Lee was being cagey, he was being careful; yet, when Agent Richards said aren't there rules about billing statements and how long you have to keep them he says well, if there were, I guess I didn't follow them.

The Government suggests that the explanations for the fact that there are no billing records are inconsistent. They're not inconsistent, Ladies and Gentlemen of the Jury. There are two ways to maintain billing records and this is a matter of common sense, I'm not talking about evidence in the case. If you've got the invoice, you can hand over the invoice. If you don't have the invoice and there's a file that permits you to reconstruct it, then presumably you can use that.

In this case, Ladies and Gentlemen of the Jury, there was no invoice. Moreover, there was no file from which to reconstruct billing. Why? Because this was a general retainer. All the money was paid up front. That was going to be the only money that was paid. Hence, notwithstanding what it says on page two, there was never going to be an obligation to send bills of account, never an obligation to say you owe us more money or different money. Never, ever, ever.

With regard to the second set of checks that the Government provided, I want to make this observation.

Yesterday we saw a group of checks in large sums, I don't have

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Summation - Sercarz

them here, written on the SML account, signed by Lee Hymowitz to pension accounts. You may recall them. It took place in April of 2007. Look, Lee Hymowitz forgot having written those checks. There was no reason for Lee to conceal having written those checks because the fact of the matter is, Ladies and Gentlemen of the Jury, that the money landed in the account of the SML.

The way it should have worked is that Mr. Freeman should have taken his share of the money, put it into the Hymowitz & Freeman account where Lee was a partner, and they should have split the money there. Instead, a shortcut was apparently employed. But here's what I would ask you to keep in mind. There is no allegation in this case. None, zero, none, that any money was misappropriated out of the SML account. The money goes from the SML account to the contractors.

There's no money that any contractor was shorted by Mr. Hymowitz and Mr. Freeman. You can be sure they would have been charged with it if such a thing had occurred. I respectfully submit Lee Hymowitz simply forgot having written those checks and there really is no other explanation that makes sense, and there is nothing to be derived from the fact that those checks were written that corroborates the allegations in this indictment, the one that you have to focus on.

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Summation - Sercarz

Now, in judging the guilt or innocence of Lee
Hymowitz you must determine what Lee knew and what he intended
regarding the payments from MCR to the Hymowitz and Freeman
firm. Lee took the witness stand. He told what you he knew,
he told what you he intended. For months he had been
approached by Bogdan Starzecki under the guise of
conversation. Lee, what are you up to. Starzecki was
determining whether or not Lee would help him get outside
work. Mr. DiChiara went through the time frame.

As the civil lawsuits against Mr. Starzecki proliferated, as people at HPD knew about it, his days of getting public jobs were numbered. This was a prevailing wage fraud lawsuit, a lot of the HPD jobs were prevailing wage jobs. Even if they weren't, questions would have arisen about hiring this MCR as a contractor, paying on their invoices and he knew that he wasn't long for HPD work. And as a result, the drum beat became a little more intense and he told Lee, can you get me private work, I'll retain you. And Lee said, when air ready, let me know.

Well, January 2nd, 2007 he was ready, and he made his telephone call, and he spoke to Mike Freeman. He never spoke directly to Lee Hymowitz. There is no allegation in this case that Bogdan Starzecki spoke to Lee about any kickback payment. None in this case. The conversation that Mike had with Lee led Lee to believe that they were being

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Summation - Sercarz

2270

retained for all services for a year at the rate of \$100,000. 2 And in Lee's mind what it meant, as far as Lee's side of the 3 facts, is I'm going to try to get him work. If he succeeds in 4 getting the bids and there's any ancillary legal work that 5 derives from that, and we're not conflicted out, then we're going to do that work as well. That's the nature of the 6

contract that's embodied in Government's Exhibit 600.

On cross-examination the Government, which has tirelessly worked to assemble all of these documents, bathed in the glow of the bright light of hindsight, doesn't want to venture very far away from the documents they have. got the ECF filings. They've got the bank records, the statements, the checks and the signature cards, and so they test Mr. Hymowitz's credibility with the following.

When did Mr. Hymowitz handle his last criminal case? Why, Mr. Hymowitz, do you have the title vice president of the SML on the signature card?

A signature card, by the way, which states right on its face that two signatures are required for any check over \$2,000.

What, Mr. Hymowitz, was your understanding of the disciplinary rules regarding the maintenance of billing records?

Cross-examination they say is the most powerful engine devised for getting at the truth. These are among the

2271 Summation - Sercarz questions that were asked of my client Mr. Hymowitz. 1 2 aspects of the cross-examination had no relevance to the 3 issues in this trial and were, I respectfully submit, meant to 4 disparage Mr. Hymowitz. You charged a 12 to 16 percent interest rate on 5 6 personal loans and yet you say you're a generous man? 7 That criminal case that you appeared upon, that was 8 an organized crime case; wasn't it. I want you to forgive me, but I'm a criminal trial 9 lawyer and that one stuck in my craw a little bit. I believe, 10 11 last I heard, the Government will correct me if I'm wrong, 12 that the Constitution of the United States applies in cases 13 where defendants are charged with fraud, racketeering, organized crime offenses, street crime cases or petit 14 offenses. 15 16 17 (Continued on following page.) 18 19 20 21 22 23 24 25

Summation - Sercarz

MR. SERCARZ: (Continuing) We still haven't given that up in this country.

When you and Mr. Freeman could not both be developers, you remained active anyway. You -- Ms. Posa's words from yesterday -- you subverted the intent of the program, didn't you? Ms. Posa, forgive my back, respectfully, I say no. Bogdan Starzecki subverted the intent of the program when he paid millions of dollars in bribe money thereby, according to your theory of the case, costing the citizens of the City of New York enormous sums of money.

With regard to these questions concerning a potential for a conflict of interest on jobs where Lee might represent the contractor and yet he had a relationship with the developer, recall as to the Lutheran Synod, they had their own lawyers. Starzecki would have bid for the work in a competitive process. He would only have gotten the bid if he was the low bidder and if Starzecki was selected, Lee could represent him as a lawyer at a closing with full disclosure to all sides unless somebody objected, I respectfully submit.

The government did break new ground in connection with those large checks and, again, I repeat what I said before. Lee didn't remember them until they were brought to his attention. They were for what appears to be a perfectly legitimate purpose and nobody contradicted it, the payment of pension money at around tax time when it's customary to do so.

Summation - Sercarz

The government has brought in no evidence to suggest that there was any malfeasance in connection with those checks, that those checks were a method of diverting money, that that money was taken away from anyone else that was supposed to receive it.

I submit to you, ladies and gentlemen, the existence of these checks will not help you to resolve the critical issue in this case that has been brought to focus by Lee's testimony. Has the government proven beyond a reasonable doubt that the two checks that matter, the \$34,500 check and the \$100,000 check to Hymowitz & Freeman were kickback payments and that Lee knew it?

In view of Lee's testimony, go back and look at the remainder of the evidence and ask does it support his version of events. The retainer agreement, take a quick look at it again in the light of what you've heard about the draft. Michael's template for hourly billing. The limited amount of information supplied to Lee over the phone. An agreement that is internally contradictory. An agreement that is the opposite of a document that would be used to conceal kickback payments.

There can no longer be any doubt in this case after the government's examination that Lee was a potential source for referral work, that Lee did recommend Starzecki on jobs and that Starzecki had the opportunity to bid on those jobs as

Summation - Sercarz

a result of Lee's performance under the contract.

It was the government that offered these billing statements from the Hymowitz & Freeman law firm to the Lutheran Synod, and while they were focused only on the fact that, oh, in this case, there's detail, there's hourly billing, they neglected to look at the rest of the bill and what it stood for.

There's clear evidence that in January, February, March, April, May of 2007, Lee was actively involved in this project. Lee was having conversations and meetings with the Reverend Mills, with the architects, with other builders in connection with the project. That can no longer be denied, ladies and gentlemen of the jury. And based on that, I respectfully submit you need to credit the remainder of Lee's testimony, that he was involved in projects on Staten Island near Brooklyn Hospital. There would have been ample opportunity for Mr. Starzecki to have obtained work had not the economy gone into the tank.

I saw no witness from the Lutheran Synod come in and deny any of that. I saw Ms. Sicignano, but I didn't see the rebuttal witness for that. As to the evidence that there was every inducement for MCR to pay, as to the evidence that Lee did as he promised to do in accordance with the contract, I saw no rebuttal witness for that, ladies and gentlemen of the jury.

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Summation - Sercarz

Now, consider in the wake of Lee's testimony the reference on the tapes to Starzecki's, Starzecki's reference on the tapes to the real estate deal, not you know that thing that we were working on, but the real estate deal. Now consider the meaning of Lee's statement to Agent Richards. I don't know how to come up with preparing a document that would be able to break anything down. I have no clue. That's what happens, A, when you don't remember the retainer agreement, B, when no legal work is generated by the retainer agreement and, C, there is nothing as a result to bill.

Lee performed under the contract at the end of 2007. He was entitled to the money, but there was nothing further to account for according to the terms of page one of this agreement, ladies and gentlemen of the jury, and I respectfully submit that Lee's testimony helped solve the mystery of the \$34,500 check.

Recall, the first check came in. I'll put the checks up. January 31st of 2007, the first of the two checks: January 31st, 2007. A check made payable to Haymowitz and Freeman, H-A-Y-M-O-W-I-T-Z, for 34,5.

The importance of this is the retainer agreement may have been signed by Mr. Starzecki on February 26th of 2007, but Lee told you he prepared this document the first business day back after the new year. It's dated January 2, 2007. That is likely the date on the draft that was dropped on

Summation - Sercarz

Mr. Freeman's desk. That means they were talking about this agreement at least as early as January 2, 2007. The check came in on January 31st and I respectfully submit to you you ought to consider that this may have been a down payment on that check, on that retainer, rather.

March 2nd is the date that you have the 100,000, the 50,000 and the 50,000 -- the 25,000 and the \$25,000 checks.

Here are the two checks to MCR -- to Marcus Garvey, rather. Check numbers 16633 -- it's not in the folder, but I submit to you there were two sequentially numbered checks.

One for 25,5 and one for 24,5, which added up to \$50,000.

Look at the number on the check. 16633. The other one was either 32 or 34. You can ask for these exhibits.

Here's the check for \$100,000 that was written to Hymowitz & Freeman. It's at least 23 numbers up in the sequence. Mr. Starzecki wrote a lot of checks that day, ladies and gentlemen of the jury, and note the spelling of the name of the firm. By now, he has the retainer agreement and he knows how to spell it.

When I showed him Hymowitz Exhibits A, B and C, those vendor balance sheets, the checks he wrote to Haymowitz and Freeman came up on a different sheet for Hymowitz & Freeman. Somebody who worked for him needed to prepare checks and indeed, he had clerical people preparing his checks. They may not have realized that a down payment was already made

Summation - Sercarz

toward this 100,000 which says here in the memo entry, Retainer fees. That's your explanation for why the 34,500 was paid. It was meant to be a down payment. A month later, when Mr. Starzecki was writing numerous checks, that fact was neglected and \$100,000 was paid.

And if I'm right about that, then consider this idea of the one third, one third, one third split when all Hymowitz & Freeman were supposed to get is \$100,000 and Mr. Dunn gets 148, \$150,000, and the total amount of the payment is supposed to be \$450,000.

You can't just take what they give you and stay there. I'm asking, I'm begging dig a little deeper. Think carefully about this, ladies and gentlemen of the jury.

By the way, thereafter, no more money for the Hymowitz & Freeman firm from Mr. Starzecki and MCR, but Marcus Garvey continues to get checks exacerbating the differential. If you are going to assume that this was a one third, one third, one third split, why is it that Mr. Dunn is the one who continues to receive the money, particularly when Starzecki came to you and told you under oath, I was nervous about giving him money because he wouldn't give me invoices.

Question number one: You think he didn't have the wherewithal to say if this was really what was going on, hey, Stevie, no tickee, no shirtee, no invoice, no money? You think he really didn't have the wherewithal to say give me

Summation - Sercarz

your invoices or I'm not paying you any further? And if he wanted to put the rest of the money in the law firm, why ask for a retainer of only \$100,000? Why not ask for records of account from the law firm and why continue to give money to

MCR -- withdrawn -- to Marcus Garvey.

July of 2007, another check for almost \$10,000.

It boils down to one question. It's the question that you've got to take with you into the jury room because my client is still cloaked with the presumption of innocence. Is this the quality of evidence that must convince you of the guilt of Lee Hymowitz beyond a reasonable doubt.

Finally, I respectfully submit that Lee's testimony is supported by testimony regarding a lifetime of honesty and selflessness. The Court will instruct you that character evidence, when taken into account together with the remaining evidence in the case, may create a reasonable doubt. And I think when a man is charged with a crime such as this on the testimony of an unrepentant criminal, when the documentary evidence is this porous and this susceptible to competing inferences, that the way a man has conducted himself throughout his life has to count for something.

You heard from John Fellin who worked with Lee as a baseball coach on the anti-bias committee on the Interfaith Council. You heard from Rabbi Greenspan who was involved with Lee in fundraising, charitable activities on the synagogue and

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Summation - Sercarz

on the Interfaith Council.

You heard with Charlotte Lee who worked with Lee at Habitat For Humanity not just watching him drive nails into houses on a Saturday, but on budgets, on the board. As they alternated as president of the organization, they spoke of Lee's character for honesty and fair dealing and selflessness, selflessness in two ways: That he always gave of himself to others and that he never sought any credit for it.

The government's questions suggested that maybe Lee was one person in Nassau County and a different person in his business dealings in New York. Yours is the power in the decision. Does that make any sense to you?

In cross-examining Lee, Ms. Posa suggested that Lee's citation by Congress and by Thomas Suozzi, the County Executive, that was just some kind of a pretext or enabled Lee to be in contact with influential people and this is why he engaged in this charitable work to begin with. Do you really think so?

In their final response to the evidence, the government brought Ms. Sicignano in to testify. Now, look, members of the jury, Lee has been a lawyer since 1976. He's been a real estate advisor and developer for 20, 25, 30 years. Not every client, I am sure, has always been happy. Not every negotiation leaves everybody satisfied and not every decision regarding the disposition of property meets with the approval

Summation - Sercarz

of all shareholders, minority and majority shareholders alike.

She was a minority shareholder in a company that owned a piece of property in the names of Lee's wife, Mike's wife, Lou Marett's wife and her mother. Her mother passed away and a portion of her mother's interest was deeded to her. She is angry at the decisions Lee made with regard to the disposition of the property. She has brought suit against him and she is so flighty that in 2012, in an e-mail to Lou Marett who was then acting as the individual in charge of this corporation, 510 Gates Avenue, she said, Lee should be elected as majority shareholder of the corporation, at least he gets it. And she now says she was being sarcastic.

Inherent in that is another kind of character reference, I respectfully submit. They have all the ECF filings. They have the access to all the cases in which Lee worked as a lawyer and I don't think it's unfair to ask yourself if this is what they bring in to court to contravene the testimony of the other witnesses who came in and talked about the years that they spent with Lee, the depth of their understanding of his character, then I respectfully submit that's a reference for his good character as well.

At the end of his testimony, Bogdan Starzecki left you with the following, and I quote.

Question: Sir, you never discussed kickback payments with Lee Hymowitz, did you?

Summation - Sercarz 2281

Answer: No, sir.

Question: You never discussed hiking the amount of your bids on any project with Lee Hymowitz, did you?

Answer: No, sir.

Question: In fact, you never discussed the retainer agreement with Lee in January or February of 2007, did you?

No. sir.

The government points to no meeting with Lee, no conversation with Lee, no indication that Lee was ever directly told that Mr. Starzecki was involved with kickback payments.

The retainer agreement is a mess, ladies and gentlemen of the jury, but that very fact demonstrates that it was not used to disguise kickbacks and the phone calls made by the government failed to establish that Lee was knowingly and willfully engaged in a conspiracy to defraud.

There is no question but that Lee was actively involved in the work of the SML. The government suggested to you that this was some kind of a subterfuge that Lee was hiding and that's just dead wrong. On my opening statement, ladies and gentlemen of the jury, I said the following, and I quote.

First of all, with regard to Lee Hymowitz, my client, he wasn't a developer on any HPD projects. Lee Hymowitz and Mike Freeman were partners in a law firm Hymowitz

Summation - Sercarz

& Freeman. Mike Freeman and Stevenson Dunn were the developers. This fact may be of little moment to you at the end of the case, but I want you to remember it now because I submit that it is the case and it demonstrates the lack of care with which the government has brought these -- and the word "things" appears in the record. I'm not sure that was the word I used. Lee Hymowitz was not a developer. Lee Hymowitz did not sign a requisition for payment. He didn't sign a document that any of the developers were supposed to sign in order to get money from HPD.

These crimes with which my client is accused have elements. The element is, ladies and gentlemen of the jury, that there was a fraud, that there was knowledge and intent to participate in the fraud. The scheme to defraud is based upon signatures on requisitions for payment and I respectfully submit to you it would have been malpractice for me not to point out to you the fact that Lee Hymowitz never signed a requisition and the reason he didn't sign a requisition is that due to circumstances beyond his control, notwithstanding his desire to participate in the activities of the investment, he stepped aside because only two out of the three were permitted to serve as developers and in the division of labor, it was not Lee's function to read, review and sign the requisitions.

Now, ladies and gentlemen of the jury, the Judge is

Summation - Sercarz

going to give you two very important instructions at the end of this case and I want you to remember them because the government has turned somersaults in this case to try and demonstrate that Lee was involved in the activities of the SML corporation. Stipulated. He was involved in the activities. But being involved in the activities of a developer is not the same as being involved in a fraud or in a conspiracy to defraud.

The Court will tell you, ladies and gentlemen of the jury, that mere presence at the scene of a crime is not enough. Mere association with people who may be engaged in crime is not enough. Conduct that inadvertently advances the goals of the conspiracy is not enough. There has to be knowledge. There has to be intent, ladies and gentlemen of the jury.

And with regard to this process of selecting general contractors and securing their bids but choosing the lowest responsible bidder, the method of filing the requisitions which were so voluminous, the method of walkthroughs, the method of sealed bids to choose the lowest responsible bid, the method of walkthroughs in order to determine the percentage of the work that was done in connection with any payment, all of that would have reassured any outsider who was not directly involved in fraud that the system was working as it should.

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Summation - Sercarz

That's what Lee saw from his vantage point as counsel. That's what Anne Marie Hendrickson saw, that articulate bright capable woman who came to court to testify in this case on behalf, on subpoena by or on behalf of Mr. Dunn. She didn't know that there was fraud taking place. There were a lot of good people who worked for HPD who didn't know that fraud was taking place and, ladies and gentlemen of the jury, Lee Hymowitz didn't know that there was fraud taking

I repeat something that Mr. DiChiara said. When I sit down, no one else can rise to speak for the defendant in the case. I have tried to be focused in my remarks, careful in my remarks, but if the government raises an issue on their reply summation that I have not addressed, it doesn't mean there is no answer, and I'm asking you keep these issues in mind. Do the work carefully, considerately, attempt to answer the questions for yourself.

I respectfully submit that the most remarkable testimony in this trial came from my client himself. On October 5, 2011, Lee Hymowitz was arrested. For two and a half years, he has labored under the weight of these charges. He's been investigated and prosecuted by the full might of the United States Government. He took the witness stand and subjected himself to cross-examination and yet, he still can say from the witness stand, I am blessed. I am blessed.

Summation - Sercarz

2285

The government suggests that he is in this for the money, that he took kickbacks for the money. After all he's been through, he could sit there and tell you, I am blessed. He's blessed that he has you, ladies and gentlemen of the jury. He's blessed that he has you to safeguard his rights. He's blessed that he has you to look not only at the documents, but to go into the dark and examine the issues of knowledge and intent and determine, once and for all, whether the evidence establishes beyond a reasonable doubt the guilt of my client.

Members of the jury, my time is at an end. Your time will soon be at hand. Have the wisdom to follow the law. Look in every dark corner until you find the truth in this case and then have the courage to be fair to Lee Hymowitz.

Thank you.

THE COURT: Thank you.

Mr. Evans?

Mr. Evans, we're going to take a short recess.

MR. EVANS: Thank you, Your Honor.

THE CLERK: All rise.

THE COURT: Ten minutes, please.

(Recess taken.)

(Continued on next page.)

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Summation - Evans 2286 1 (The following occurred in the absence of the jury.) 2 THE COURT: Is everybody here? 3 All right, Mr. Evans. 4 MR. EVANS: Yes. (Jury present.) 5 6 THE CLERK: Thank you. 7 Please be seated. 8 THE COURT: We will now hear the summation of 9 Mr. Evans. 10 MR. EVANS: Thank you, Your Honor. 11 Ladies and gentlemen of the jury, we have now been 12 through the Ides of March, a tumultuous time of the year when the rotation of the earth and the change of the seasons brings 13 14 us the inflammation of our sinus cavities, as the spring plants start to grow, the sun is out but the wind is still 15 The Ides of March have always been a difficult time. 16 17 It was the Ides of March when Julius Cesar was assassinated, 18 after having been warned, stay away, beware of the Ides of March. 19 20 The basketball folks call it March Madness, and 21 madness it be. Because here we have a bundle of allegations, 22 a messy offer of proof that you are expected to untangle. 23 I would suggest to you, ladies and gentlemen, that's not your 24 job. 25 You hear all the time about fast talking defense

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Summation - Evans

lawyers. They are going to slick you. They are going to try and confuse you. They want to muddy the waters. Unless we are going to talk about 4-Bar Delta Blues, I don't want muddy waters. I want it to be clear, clean. I want to see right down to my toes in the stream. Because that way I could be certain that I am not being fooled, tricked, hoodwinked, led astray.

Now, the very capable people at the US Attorney's Office have worked to help you gin up a little citizen outrage. Outrage is an emotion; outraged people act, react. Outraged people get road rage, outraged people burn up their own neighborhoods and riot. Outraged people don't think. They don't analyze. They make hasty decisions.

I don't want any hasty decisions. I don't want any emotional decision. I want you to have a clear-eyed look at the allegations, at the witnesses, at the proof that has been offered. Then you will be outraged about the waste of your tax dollars, spent chasing Stevenson Dunn, Mike Freeman and Lee Hymowitz.

You should be outraged that the Federal Bureau of Investigation got in bed with admitted, acknowledged, accomplished crooks, liars and thieves, people that they caught red-handed. Then they let those people, the liars, the crooks, the corrupt, lead them around in this investigation.

Now, that is outrageous. That is shortsighted. And

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Summation - Evans

they want to explain it for you. I don't want an explanation. A charge, some evidence, a decision. My grandmother used to always tell us, you can't complain about fleas if you lay down with dogs.

On our behalf, in our name, they cleaned up Bogdan Starzecki. They brought him in here and they wanted you to believe that he brought himself to this country, he learned to speak English from interacting with people. He worked hard. That's the American way. That's intended to get you in that Emma Lazarus frame of mind. You know, give us your tired, your hungry, your huddle masses yearning to be free, the wretched refuse. The wretched refuse when in fact that's not true about Mr. Starzecki.

Mr. Starzecki came here as a university graduate. Mr. Starzecki was very evasive, you will remember, when I asked him, did you study English? He turned that question into, did I major in English. No, but I took English at university.

Okay. When I asked Special Agent Richards if they audited the business of MCR, he said no because this fellow had proven himself -- this is the word -- trustworthy. This guy, this guy who first comes into a federal courthouse for a failure to pay his subcontractors the accurate wage, he, ladies and gentlemen, is trustworthy. This guy, who admits to corrupting a city official, we trust him. An agent of the FBI

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got on that stand and vouched for that guy. Now, that is an outrage.

On our behalf, they set traps to catch Stevenson

Dunn. They recorded his phone calls. They set up his

meetings. They had ruses and requests for fraud. What did
they get for their repeated requests from Stevenson Dunn? Not
a thing.

When their puppet, George Armstrong, got him on the phone, reading from a script, hey, Steve, you know, we need some invoices. Steve Dunn goes, a hum. How about that money you owe me, George?

That worked for some people. But I wasn't raised to believe in coincidence or luck. I was told that I needed to understand how life worked and I don't believe that character, true character of a person, is changed by big events. I actually believe that it is defined by them. It is not what you do to get knocked down. It is what you do to get up.

But look at the character of the people involved in this case. It is not a coincidence that Bob Starzecki was able to snare loads of developers with his ringy-ding-ding call for fake invoices. Bobby calls for invoices, you give him to them. Or, you know what you get, guilty, guilty, guilty.

George Armstrong calls Steve Dunn at least on two occasions that you heard and asked for invoices. Come on,

Stevie, I need the invoices. He got nothing.

Bob Starzecki called Lee Hymowitz, I need an invoice. What did he get? Nothing.

So then he got tricky. He called Mike Freeman, asked for invoices. Got nothing.

So then it got really tricky, just like work. When you can't get it done you go to your boss. The boss man gets on the phone. He says listen, you know, it's a criminal thing. It's a civil thing. It might be an audit thing. Can you send me the invoices? What did they get? Nothing.

But these three guys are supposed to be in a conspiracy. These repeated, scripted, arranged, controlled encounters with my client yielded nothing. I suggest, ladies and gentlemen, it is because it is not in their character to commit fraud.

If, arguendo, let's just flip this around. Suppose it was in their character to commit fraud. Wouldn't you do it for your own benefit? Would you need these bums who they brought to put on the witness stand? Wouldn't you make certain to stay inside the NEP program?

Think about this. With their experience, these three gentlemen, one who is a tough, agile trial lawyer, Mike Freeman; one who is an experienced real estate deal guy, with long relationships and access to finance, Lee Hymowitz; and then there is a guy who without a college degree, without

Summation - Evans

anybody's help, before he ever met anybody at city hall, had bought, refurbished, resold, seven to ten properties in Brooklyn. He didn't need a city program. So if it was in his character to create fraud, wouldn't he have done it for his own benefit? Or is the character to create fraud necessarily schizophrenic?

I will not be moved from my firmly held belief that Stevenson Dunn did not commit the acts in this indictment and I will not be moved from my firmly held belief that the government in the persons of the US Attorneys assigned have not proven these charges, including the elements, beyond a reasonable doubt.

I shall not be moved. When my friends forsake me, I shall not be moved. When the weight of fate gets heavy I shall not be moved from that conviction. Because close association doesn't work. You can go to school with thieves and not be a crook. You can grow up without money in your pocket and not be poor. Being near people who are crooked and of bad character doesn't make you so.

And everybody who has a mother, that's everybody, heard about associations. I wish you wouldn't hang out with those people. Because we know that associations bring inferences.

But, ladies and gentlemen, in a jury we don't use inferences. We evaluate evidence. When the witnesses in a

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Summation - Evans

case are not credible, when the witnesses, no matter how well presented, have a motive to lie, a motive to mislead you, I suggest you shall not be moved.

There are many problems in the prosecution of the case against Stevenson Dunn. First, the witnesses are weak, they are vulnerable, and they are, without exception, compromised. They couldn't tell you the truth if they wanted to.

Secondly, and here is the thing, the numbers don't add up. I have worked on this case for two-and-a-half years and I can't connect the dots. And I suggest, ladies and gentlemen, that if the government's evidence was as strong and clear as their zeal to prosecute, this case would be open and shut.

This is what lawyers call a paper case. There are contracts. There are bids. There are emails. And we learn in law school to read the four corners of the document and it says what it says.

Where are those contracts that say that Stevenson Dunn padded or paid someone to pad an invoice?

And they want you to forget your common sense. They want you to believe that Stevenson Dunn would take checks for a kickback, and he will do it on the layaway plan. You could pay me as you go. I wonder if you get a little receipt book when you pay the kickback by check. If you pay in cash, do

Summation - Evans

you get extra points? Everybody else got cash but these guys are so dumb, the experienced people are so dumb that they would take a check? Scratch your head with that one for a minute.

Then they did some things in this trial to help you. They added some spice to a paper case. They gave you identifications of the defendants. They had every witness come to the box, point and identify the defendants. The identifications were never in dispute.

But the more times you see them pointed out, the more likely you are to treat them as if they're already guilty.

They did that with a surveillance photo of Mr. Dunn in Brooklyn meeting with George Armstrong, a surveillance photo. What did you learn from that surveillance photo? That Steve Dunn has a potbelly? He wasn't hiding. He had on a red shirt.

They let you look at that photo of a man carrying a bag because if he's carrying a bag and he just met with George, could be cash in the bag. Wait. He just came out of Juniors and he's got a potbelly. I can draw an inference there. It's a cheesecake. Sometimes a thing is what it looks like.

They allege that Stevenson Dunn is colluding and conspiring to rig the bidding process of the NEP

GR OCR CM CRR CSR

entrepreneurs, round five. He decided in the middle to get to be a thief. He didn't do it in round one. Oh, by the way, he did get selected to go to round six either.

Here is a question I don't have an answer for at the end of the longest trial I've ever participated in. Where are the other bidders? Where are those people who he approached and said, hey, Johnny Contracting, bid this one right about here. Johnny says, but that's a little high, Stevie. Don't worry, Johnny, I got you.

Hey, Jimmy Contracting, bid this one. Right about there. But Stevie, that's a little high. Don't worry, Jimmy, I got you, baby.

Where is Johnny? Where is Jimmy? Where are these people who bid for this work as a profession, who did do it as a living, who would not be winning if they were convinced to bid high, why would they agree?

And here is the other thing. What do they get?

Jimmy, Johnny, I want you to walk away from this one. What am I going to get, Stevie. It's a \$20 million bid. I'll get you on the next one. It's only worth five, Stevie.

Where are those bidders that he convinced to bid high? You didn't see one of them: Not one. There were three to seven. You didn't see one. In fact, ladies and gentlemen, I would suggest, they didn't even tell you their names.

You've got to work that out.

Summation - Evans

Where were the meetings that were held? Oh, wait, I know. Bob Starzecki said he went to Steve Dunn's fish store. Where is it? Did you see any surveillance photos of the fish store? Did they give you the address?

How did you arrange the call, I believe I asked Mr. Starzecki. Oh, I called him or he called me and I went over there.

Because in this world now, when Steve Dunn calls, you leave your office in the Bronx and you come on over.

Because when you owe people money you always answer the phone, right? 6:00 o'clock in the evening, I always answer when it says Visa International calling.

And then I've got to ask you, where does the money come from that Steve Dunn is supposed to have used to bribe these supposed to have bidders? They said he cashed the check to give it to them. Did they bring you the check he cashed? The agents of the Federal Bureau of Investigation can get the records from a bank if they want them. Where are they? Where are they?

And then you've got to ask yourself, what's the benefit of the crime, where is the bargain for Steve Dunn? When he starts the NEP program he fills in an asset statement sheet that said he's got a net asset value of over a million dollars with seven buildings, all paying him rent.

He didn't collect the fee for the Lexington Avenue

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cluster, the biggest one, the \$20 million project, the first 2 one they did, rehabilitating apartments for people to live in.

3 They didn't bring a line of people in here to tell you that

4 when they rehabilitated them my bathroom didn't have a toilet.

My toilet's water ran all day. People will complain when they 5

move into a rehabilitated apartment, trust and believe. Thev

didn't bring you one.

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He didn't get paid the developer's fee and he got thrown off of the project after it was 85 percent complete. He didn't get paid the reimbursements money he was owed. if you just do math, he's in a net negative position, right? What happens to his net negative position? He doesn't get selected for the next round.

But then, then, I am just following along here, he bribed or demanded from Bob Starzecki a kickback.

These are business people. We all agree on that. We are negotiating interest rates, written statements, retainer agreements, and we know that Bob Starzecki made money because he said I made between six and 20 percent. That's a big delta there, between six and 20 percent.

Six percent on a \$20 million job, that comes out to Twenty percent on a \$20 million job, that comes to four.

Who is making money on these deals? Wendell Walters made money. He went on fabulous vacations. He went to Greece on the honeymoon, got a house bought through a third-party

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buyer, had money put in a trust.

He got a mortgage application. I'll bet you he lied on the mortgage application because he said he paid \$800,000 for that house on Strivers' Row but he was maximum salary, his maximum salary when working for the City of New York was \$130,000. Did anybody do math? When I went to apply for a mortgage they told me two-and-a-half times my income. If 130, 130, 65, five, nine, carry the two, I guess -- that gets me to 325 he can afford. He bought a \$800,000 house? Do math.

Somebody is leading you down the primrose path.

Let's go back to the base allegation, that these frauds that are perpetrated on the City of New York, the Department of Housing and Urban Development and all of these good people cost them money.

They brought Peter Spina in here who has 35 years work at HUD. And you will remember, he and I had a colloquy about macro or microeconomics and the judge told me stop it.

But you heard what Mr. Spina said. He said, once we put it in our budget, that number doesn't change. He said, when going through the documents, that if there is an overrun, it goes to the developer.

So if HUD says they are giving you 135 for this project, City of New York, you are getting 135.

So the allegation that this fraud, these padded invoices, inflated the cost, that's the theory. Except the

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theory doesn't match their own witness and their own evidence.

They say that my client bribed contractors to bid high. What did he give those contractors? Leave that alone. Don't be messy. He bribed contractors to make sure that Bob Starzecki would be selected and on the 20 million dollar project, he didn't ask for squat.

Where is the math?

They didn't bring you Bob Starzecki's winning bid. Think about that for a second. They said that Bob Starzecki, who testified, ladies and gentlemen, that his bid was hundreds of thousands of dollars higher because he met with Steve Dunn. Now, they didn't audit MCR, because I asked. They didn't check his computers to see if the numbers he told them were true. They didn't show you his bid before the alleged meeting in the mysterious fish market and the bid submitted.

And they haven't reconciled the three different stories you heard about how bidders were selected. They want you to believe Wendell Walters because he's a broken man. We can trust him now. You can always trust a broken man.

He said that they suggested and he selected. That's what he said.

The lady who was his boss, poor woman, couldn't remember anything.

Did you ever run an audit? No.

After Wendell Walters was caught and accused of

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Summation - Evans taking all this money, did you go through his files? No. Did you meet with the US Attorney's Office? No. I can guarantee you, ladies and gentlemen, when you return to work, next week or whenever you go, because you all are going to go in tomorrow. I'm sorry. When you return to work tomorrow and they find you stealing money, the next person they are going to talk to is your boss. Because that's a failure to supervise. (Continued on next page.)

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BY MR. EVANS: (Continuing)

MR. EVANS: You were told that the developers get a fee and that my clients never collected a fee. And every witness the Government called, they asked them a hypothetical question. It's a beautiful piece of lawyering. If the bid were inflated, wouldn't you agree that it cost the City more? You have got to say yes. And then they say, ladies and gentlemen, you heard them, they said it costs the City more. They said it cost the City more if the bid were inflated. They didn't show you the inflated bid.

They also didn't bring you anybody from the enterprise who had a position of authority to tell you how they run their business. Don't be fooled by the not-for-profit tag. Not-for-profit doesn't mean nuts and berries, Ben and Jerry walking around the office in sandals. The enterprise was founded by one family, the Rouse family. Mr. Rouse was a big developer in the Washington, D.C. area and he decided --

MR. CAPOZZOLO: Objection, it's not in evidence.

THE COURT: Counsel, don't bring in matters that are not in evidence, please.

MR. EVANS: They didn't bring you anybody from the enterprise to tell you how they managed these programs. They didn't bring you anybody from the enterprise because maybe it's a coincidence, which I don't believe in, that the people

Summations - Evans 2301 1 who were assigned to these programs are all former employees 2 that got laid off. 3 Now, let's talk about racketeering. Mr. Dunn is 4 charged with RICO. Racketeering statutes were created by 5 Congress to break The Mob. If you get a guy with a 6 racketeering charge --7 MR. CAPOZZOLO: Objection. 8 THE COURT: Counsel, I'll instruct the jury on the 9 law. 10 MR. EVANS: To be guilty of racketeering they need 11 to convince you by evidence that Steve Dunn was part of an 12 enterprise, that he used violence or threats to conduct that 13 enterprise. 14 THE COURT: Counsel, Counsel, I will instruct the jury as to the law. 15 16 There is no such requirement under RICO that the 17 defendant had used violence, except with respect to one act, 18 which is the act of threatened violence under extortion. 19 MR. EVANS: I apologize, Your Honor, and I apologize 20 Ladies and Gentlemen of the Jury. It's not my job to mislead 21 you about the law, nor is it my job to instruct you about the 22 It's my job to persuade you that the Government has 23 failed to meet their burden of proof. 24 You have no tape recording here that I find 25 reliable. They brought Anthony Armstrong. Do you remember

Anthony Armstrong? He was a little young guy. Maybe Anthony
Armstrong was testifying truthfully. Maybe he was credible.

Maybe. Maybe he was helping his brother out, George

Armstrong.

You heard George Armstrong on a tape, like the voice from above, but you didn't see George Armstrong. George Armstrong didn't come and answer any questions. George Armstrong wasn't made available for cross-examination. George Armstrong calls Steve Dunn five -- let me say this carefully, at some time after he had written him a check, he called him on the telephone. Steve Dunn didn't call George Armstrong. George Armstrong called him.

George Armstrong called him and if you listen to those tapes, you have to ask yourself, who's bringing up what and who's responding? And you have to ask yourself if it was Steve Dunn's job in this mythical enterprise to be the heavy, the guy with the Junior's bag. Ask yourself when you listen to that tape if George Armstrong sounds afraid. Ask yourself who brings up my brother was shook up and then the brother comes in here and tells you, ladies and gentlemen, that he complains to the police all the time, but he didn't call the police after he talked to Steve Dunn.

He said, in fact, he was afraid -- I didn't get this connection and I asked about it twice -- because black Muslims had a history of violence. I thought he had misspoken and I

1 | tried to help him correct that and he doubled-down on that.

2 That's the witness you have. The younger brother of George

3 Armstrong. The hysteric. That's the witness you have on

4 which to base that evidence.

Under the logic provided by the U.S. Attorney, every person who signs a contract reads every clause and abides by it. Bob Starzecki didn't. Wendell Walters didn't. And if you don't

file a report, then you're either guilty of self-help or you're a part of the problem.

When Mr. Dunn filed a complaint with the District Attorney's office, that's okay. Nothing got done, by the way, when he goes to report that a man wrote me a check for \$50,000 on an account that's been closed for over two years.

And then, you were told, in fact, Mr. Dunn was told about how interest accrued on his commercial loans, the man who's already bought ten or twelve commercial buildings, the U.S. Attorney explained to him how interest was accrued using an internal requisition. He didn't bring you the loan documents. It was just a conclusion.

This series of allegations is a mess. They allege that Steve Dunn told Bob the builder, get a retainer agreement. They don't show you the invoices they say Steve Dunn padded. There were three clusters, the details of the clusters are not important, they say, just keep moving.

1 They've got the testimony of these crooks. They don't have

phone records to tie Mr. Dunn to anything Bob Starzecki said.

They want you to rush to judgment. This is the core issue

4 here, which is they need you to -- just, what I said.

334 Marcus Garvey Corp must be a shell, you were told. It's a sham corporation because it doesn't pay a payroll exemption tax. No testimony about anybody from the Department of State or the Department of Corporations about what makes a corporation legitimate or not legitimate. It's a sham because they told you so.

We are all limited sometimes by our experiences and we prejudge, we shortcut, we don't thoroughly analyze.

Remember in my opening I asked you very carefully not to jump to conclusions because then you give the responsibility to the defense to change your mind. That's because we believe that that's what happened in this investigation when they pivoted to focus on Steve Dunn.

They didn't audit Steve Dunn's books. They didn't ask for his computer or his records. It's not a crime to work in a dirty industry. Look at their books, they're losing money; on the first project they don't get paid; they get to the second project, they still don't get paid; and now, they're telling you that because they're in this peer group, that you have to judge them by the company they keep.

They didn't go inside HPD. They didn't audit this.

Summations - Evans

Nobody can answer the question who taught Wendell Walters how to do this. When you go to work at HPD, who pulls you aside and says listen, if you select a general contractor somebody might just what? They didn't audit it, though. They didn't go in the enterprise and look to see where the money went because I guarantee you that the person in charge of the money is in charge.

They want you, ladies and gentlemen, to give a significant amount of weight to a statement made by Mr. Dunn after having been arrested. I don't know if any of you have ever been arrested. I don't know if any of you have ever been stopped by the police, unable to leave. I don't know if any of you have ever been snatched off the street by ten agents of the Federal Bureau of Investigation's Labor and, et cetera. They need you to believe that after that, when he got over to 26 Federal Plaza, he sat down and told Agent Shaun Richards all the parts that were missing in less than an hour.

They need you to believe that because if you believe that, this is easier. A lot easier. Because then they don't have to bring you an invoice, a contract, outside bidders or records to show you the change. Look very carefully, ladies and gentlemen, at the testimony provided by Bob Starzecki. I went through it very carefully last time and I'm not going to go through it with you, but I suggest to you that the number of times the words about or more or less is used is

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significant.

On direct examination, when did you come to the United States?

About 1987. I was 22, more or less.

How long have you been running a company before you started running your own?

A good six, seven years.

When did you first start getting public contracts?

Page nine of his direct testimony lines 5 through 8.

'97, '99, beginning of 2000. He opened MCR in '97, is it possible that's when he got his first public contract?

He then told you in his direct examination that he stopped being a sub-contractor to be a general contractor and wanted to stop being a general contractor on private work, he wanted public work. And when he got to public work the program he wanted to work on was one that had private developers.

He said it was within ten years when he started his company that he started to work with HPD. That means he was at the trough for at least 16 years. It didn't take him long to figure out that they weren't crossing their Ts and dotting their Is. It didn't take him long to figure out that nobody was watching the shop, that nobody controlled delivery for detail or backup, nobody went through the requisitions on the hiring, that the politics of managing the bid, he can handle

that. Look at his testimony and look at the number of times he said it was about.

And then I want to, in closing, talk to you specifically just about mathematics. This is not even algebra, I won't talk about calculus, which I didn't do so well in. We're just going to do simple addition and subtraction.

Mr. Starzecki said that Steve Dunn wanted \$150,000 and that was going to be fifty for him, a hundred for them and they were going to split it, but now watch this math. In January of 2007, there's a check to Steve Dunn for \$30,000. In April of 2006, there's a check for 48,957. So, now Steve Dunn's gotten 78. That's more than 50, but let's just keep going.

Then, he says he wrote a check to the firm for thirty-four-five and then he wrote a check for \$100,000 on February 26th, and then he wrote two checks, one for twenty-five-five and one for twenty-four-five. If my math is correct, that's a total of 263,457. That's more than 150, but less than 450, so how do I allocate these bribes?

If I take this out, I say okay let's just give \$100,000 to Hymowitz and Freeman, that leaves 163,457 for 334 Marcus Garvey Boulevard. I still don't see how it adds up to 150. Where's the 150? The numbers don't work. The numbers don't work because they took a little piece of this, a

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lot of that and they threw in some spice. Now they need you to go back there and make it work.

That's not your job. You swore, ladies and gentlemen, that you would, to the best of your own ability, evaluate the evidence presented to new this case fairly. You swore an oath to do that. I told you when I stood up two-and-a-half weeks ago that this was an important case. Stevenson Dunn is on trial for significant crimes alleged. He can't go to jail, he can't be found guilty because of outrage. There's got to be evidence and that evidence has got to link him to the allegations.

And if somebody says to you, you know, I feel like they're guilty, ask them where the evidence is. If somebody says to you, well, yeah, but you know, I could believe he would have done -- ask him where the evidence is. Just keep asking for where the fish store location is. If you lose track and people start swaying and you go well, I don't know, I want to make a deal, I want to get out of here, remember, Stevenson Dunn, Senior, Stevenson Dunn, Junior, Dorian Dunn, Khalif Dunn and Ebony Dunn. They need you to do your job. They need you to assess the information that's presented evenly, neutrally.

And I believe, when do you that, like a tree planted by the water, you shall not be moved.

Thank you, ladies and gentlemen.

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Side-Bar
                                                                2309
1
              THE COURT:
                          Thank you.
 2
              Counsel, would you come to the side for a moment.
 3
              Jurors do you need a short recess?
 4
              THE JURY:
                         No.
              THE COURT: All right.
5
6
               (Side-bar.)
7
              THE COURT: I just needed to tell you that after we
8
    sat down, after the luncheon recess, Victor handed me a note
9
    that said that Juror Number 1 told him that she found the
10
    chatter between the Government and the agent was distracting.
11
              MS. POSA:
                         Sorry.
12
              MR. CAPOZZOLO: Sorry.
13
              THE COURT: I don't think there's anything to be
14
    done about it, but I am obligated to advise you of that.
15
              MR. EVANS: While we're here, Your Honor, I
    apologize for my impertinence. I had a note in my closing
16
17
    that was not supposed to be there. I didn't intend to go that
18
          I looked down at the piece of paper, it wasn't in the
19
    right place.
20
              THE COURT: Okav.
21
              All right, are we ready? Mr. Capozzolo are you
22
    ready to go?
23
              MR. CAPOZZOLO: Yes.
                                     Yes.
24
              THE COURT: Yes?
25
              MR. CAPOZZOLO: Yes.
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Rebuttal Summation - Capozzolo
                                                                2310
                          And you had said half-hour.
1
              THE COURT:
 2
              MR. CAPOZZOLO: About that, yeah.
              THE COURT: All right.
 3
 4
               (Side-bar end.)
5
               (In open court.)
6
 7
              THE COURT:
                          Members of the Jury, you will now hear
8
    the last summation, which will be the rebuttal summation given
9
    by Mr. Capozzolo.
10
    REBUTTAL SUMMATION
    BY MR. CAPOZZOLO:
11
12
              MR. CAPOZZOLO: Good afternoon.
13
              THE JURY: Good afternoon.
14
              MR. CAPOZZOLO: I'm not going to talk about the
    whether female are friend or foe or Yul Brynner or Rocky or
15
16
    philosophers from 518 B.C. I am just going to talk to you
17
    about the evidence that came from that very brightly lit
18
    corner of this room where the witnesses and evidence came in
19
    to you and showed you how a long-term investigation by the
20
    Federal Bureau of Investigation revealed a mass series of
21
    corrupt acts taking place by officials in HPD and a number of
22
    private developers, including the defendants Stevenson Dunn,
23
    Michael Freeman and Lee Hymowitz.
24
              My job is to respond to some of the arguments made
25
    by Counsel who came up and very sometimes theatrically,
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Rebuttal Summation - Capozzolo 2311 1 loudly, in tones that expressed great is disapprovement [sic] 2 of the Government's case, but I'd like to just point out a 3 couple of things to just demonstrate to you why their opinions 4 are just arguments and why what I am going to ask you to do and what the Judge will instruct you to do is just to rely on 5 the evidence before you and not count as opinion. 6 7 Mr. DiChiara stated that, for example, one of the 8 reasons you should ignore the very lengthy detailed specific 9 testimony of Bogdan Starzecki is because he danced when he 10 testified about forfeiture in his agreement with the 11 Government. Page 907 to 908 of the transcript. 12 Now you have two properties in Panama; correct? 13 ANSWER: Correct, sir. 14 QUESTION: Now, you have forfeited them to the Government? 15 16 ANSWER: That will be established later. This is up 17 to the Court. 18 QUESTION: Sir, are you going to fight the forfeiture of these prompts to the Court? 19 No, sir. 20 ANSWER: 21 I don't know what kind of dance you would call that, 22 but he wasn't evading the truth. 23 Counsel's also talked about that Bogdan Starzecki, 24 when confronted with documents in these proffer sessions with 25 the Government, came up with these apparently, you know, in

accusatory tone false statements made by Mr. Starzecki about the defendants in this case. Not true.

You heard the testimony from Special Agent Richards who testified at length and said, in fact, that when Mr. Starzecki came in, they had no knowledge of any of these individuals. That's what makes what Mr. Starzecki did so remarkable in that sense, is that he walked into a room not himself knowing that the FBI knew anything about Louis Adorno, Michael Provenzano, Wendell Walters, those developers Sergio Benitez, one of Bogdan Starzecki's closest social friends Eddie Torres and all the others that he listed at length. The FBI had no idea.

Mr. Starzecki was not confronted with any documents. That was an incorrect statement. Of course, when Mr. Hymowitz was confronted with documents, what does Mr. Sercarz describe that as? A refreshment. He was refreshed. And now he knew what the truth was. I only point these things out to give you an idea that through the course of these closings, many of the arguments by Counsel are just that, arguments, and don't rely on the evidence presented to you.

For example, Mr. Dunn just mentioned that it was the Government's position that Bogdan Starzecki bribed the other contractors to bid high. The Government's position has never been that. We don't have evidence of those conversations.

Bogdan Starzecki couldn't wire-up against other contractors

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Rebuttal Summation - Capozzolo

because he didn't know them. Stevenson Dunn did know them, but obviously because he's sitting across from the table denying accusations, including ones in which he's recorded bragging about bribing the assistant commissioner of HPD, he's not in a position to wire anything up for the FBI.

And the Government's position was never that these bidders were necessarily bribed. What Bogdan Starzecki told you is that he had an understanding with Stevenson Dunn, you can add to it your bid; if you win, you're going have to pay us. There was no understanding, there was no testimony in this case that the other bidders were paid to bid high and not get the job. The understanding by Mr. Dunn to Mr. Starzecki was there is room to pad, we'll have to see how it plays out. You get the contract, you pay. That was the understanding. Similar to what Mr. Starzecki said about all those other projects he testified about. So again, the argument wasn't accurate.

Now, obviously Mr. Starzecki represents an important witness in the Government's case, but he's not the only witness. And in construing Mr. Starzecki's credibility, which is what the Judge will instruct you on, and you have to make a decision about whether or not to find him credible, I will argue to you that the lawyers have unfortunately grossly misrepresented many of the sequence of events regarding his cooperation.

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2314

Mr. Starzecki gets arrested for prevailing wage He's part of a scheme to pay the workers less than they were supposed to get through the sub-contractor. admitted that on the stand repeatedly, he was questioned about it repeatedly. So, he's charged with paying less than prevailing wage in a wire fraud scheme. He walks in to the Government not knowing what the Government knows about him, not knowing if many of the people he's dealt with he's been on tape, not knowing what records the Government might have and he starts to reveal all the identities of the individuals who are participating in this massive corrupt scam that destroyed the integrity of a program meant to bring housing to poor people throughout New York City.

When he does this, he doesn't know what the Government will be able to find out later or at that time. Ιf he lies during that process, the agreement is ripped up and thrown away. Something curious one of the Counsels mentioned was he got that agreement like years later after he started working with the Government. Yeah, that's why he was on a tightrope. He was like a guy on a tightrope with a blindfold.

(Continued on following page.)

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Summation - rebuttal - Capozzolo 2315 MR. CAPOZZOLO: (Continuing) For years, he 1 2 cooperated, he told the government what he knew, not knowing 3 what the government was investigating, researching, what they 4 would find. He's forced to make recordings with numerous 5 individuals he's told the government he had corrupt relations, 6 corrupt activities with. He was forced to go out and get 7 invoices from corrupt developers to whom he was paying 8 kickbacks. 9 None of those things he knew the first day he walked 10 into that room with the government that he would have to do. 11 Think of the risk he's taking. He's charged with prevailing 12 wage fraud. One, you know, a prevailing wage scheme that 13 carries a 20-year term, and he walks out of all those 14 proffers. After doing all this, now he's pleading guilty to 15 RICO, multiple wire fraud counts, all these counts, 20 years, 16 If you add it up, it's like 140 years of potential 17 liability and he still doesn't have the agreement until the 18 day, basically the day Stevenson Dunn is arrested in October 19 of 2011. 20 If the government, if contradictory evidence had 21 come up and the government --22 MR. DiCHIARA: Objection. 23 THE COURT: Sustained. 24 Counsel, don't go into the --25 MR. CAPOZZOLO: That's fine, Judge.

THE COURT: Do you understand? Okay.

MR. CAPOZZOLO: Obviously, until he has that agreement, he has no promise.

And if the, if Mr. Starzecki is caught lying during those two years before he had his agreement, he's now confessed to crimes that can put him away forever. And so he's walking on a tight rope that entire time. He doesn't have that deal. He doesn't have the deal until that investigation has concluded.

And by the way, I just want to read the entire provision regarding that 5K. It says the following.

If the office determines that the defendant has cooperated fully, provided substantial assistance to law enforcement authorities and otherwise complied with the terms of this agreement, the office will file a motion pursuant to USSG Section 5K1 with the sentencing court setting forth the nature and extent of his cooperation. Such a motion will allow the court in applying the advisory guidelines to consider a range below the guideline range that would otherwise apply. In connection, it is understood that a good faith determination by the office as to whether the defendant has fully cooperated and provided substantial assistance, and has otherwise complied with the terms of the agreement and the office's good faith assessment of the value, truthfulness, completeness and accuracy of the cooperation shall be binding

Summation - rebuttal - Capozzolo

upon him. The defendant agrees that in making this determination, the office may consider facts known to it at this time. The office will not recommend to the court a specific sentence to be imposed. Further, the office cannot and does not make a promise or representation as to what sentence will be imposed by the court.

The last part, of course, which the defense counsel didn't read to you in the closing which tells you that no matter what we say, no matter how much substantial cooperation he gets, it's up to a court who's going to know about everything that Mr. Starzecki has done, all his testimony that happened in this very bright lit courtroom, all of that will be in front of a judge to decide what sentence he gets.

And it's also -- he's also allowed himself that if the government decides he has not told the truth, he's done. There's no appeal. There's no nothing. He's done. He goes to jail. And he didn't even get that agreement until he had already done all those acts of cooperation that he had done for two years. This is a deal no person would want to make. This is a deal he's pushed into.

They complain that the government made the contract with Mr. Starzecki. This is a contract that binds him to telling the truth. They made a contract with this man for, multiple contracts with this man to make money.

Now, there's a number of aspects about

Summation - rebuttal - Capozzolo

Mr. Starzecki's testimony that demonstrates to you that he was truthful. I would tell you that we begin with, for example, the amount of money.

There was a large discussion, there's been a lot of discussion the map of the payments, remember? The government went through the details of how the kickback payments are made. They made a big deal about the fact that look how the money ends up at the time the payments are made, but the defense has misconstrued what the government showed you. Bogdan Starzecki testified that the agreement with Stevenson Dunn and the other defendants that Stevenson Dunn told him that day was that you are going to pay us a \$450,000 kickback. You are going to pay all that money to me.

So understand that the original understanding with the defendants was that the entire kickback would be paid to the Marcus Garvey Corporation. The government has never intended to demonstrate to you what the split, how the defendants would divvy up the money.

The reason we tell you about the \$150,000 payment is because it demonstrates Bogdan Starzecki's understanding and it corroborates what he testified to on the witness stand that when he has the conversation with Stevenson Dunn about that it's him, Lee Hymowitz and Michael Freeman, when Bogdan Starzecki sits down to write out the \$150,000 kickback, he divides it one third, one third, one third. That was his

Summation - rebuttal - Capozzolo

decision to do that. He didn't tell you Stevenson Dunn directed him. He wrote it. And that's why it corroborates with Bogdan Starzecki said that he understood that this, this kickback was to go to three different people.

The other payments he made, he told you he made them at the request of Stevenson Dunn. Dunn tells -- Bogdan Starzecki told you that he made the first payment to Stevenson Dunn because he asked for it. He asked for the 48,000, remember? And then what he told you is that he didn't get invoices from Stevenson Dunn and when he did that, he then approaches Michael Freeman to get the money and that's when he starts making the payments to the firm.

So the fact that there's \$150,000 sent in thirds, one third to Mr. Dunn and two-thirds to the defendant, the other defendants, Mr. Hymowitz and Mr. Freeman demonstrates to you that the split, that his understanding of the agreement was that the three men were conspiring together.

Now, they talked about, in that same category, about the evening up of the money. Remember? They talked about the evening up of the money. The government never tells you how to even up the money. What we did show you, however, is that despite the defendant's allegations that they don't have the opportunity to do this, you see that they did.

How do we know that? You saw the checks. The money goes from Bogdan Starzecki to the firm and it goes to Marcus

Garvey Corporation.

Then we had Stevenson Dunn on the stand and he's confronted with the checks. Remember the checks that were written by Marcus Garvey Corporation to Lee Hymowitz's firm? What does Stevenson Dunn tell you? He had numerous private mortgages with these defendants. He's making payments to them. There's numerous way for Mr. Dunn to make these payments to divvy up the money. They tell you that the government doesn't prove the divvy because once the money gets into these accounts, it's impossible to show how they get the money back to each other.

Those few checks, which Stevenson Dunn said were not the only checks, demonstrate to you that these men are exchanging money at numerous occasions, numerous times. They had private mortgages on other properties. There's other debts. For example, we have no idea if before this transaction occurred, Stevenson Dunn or the law firm owed money to each other on other transactions. There's no way to prove once the money goes to them what the divvy is. The point of the \$150,000 payment is to show what Bogdan Starzecki's understanding of the agreement was with Stevenson Dunn.

One of the reasons you can't find that there's a reasonable doubt about Bogdan Starzecki's testimony is because the defendants' criticism of him is completely inconsistent.

Summation - rebuttal - Capozzolo

On one hand, they tell you that this is a lying, manipulating, you know, he'll do anything and say anything to get out of trouble, but when he says something that helps the defense, he loves to take it, right? So all those crimes that Mr. Starzecki told you that weren't crimes that he did with the defendants, you didn't hear one suggestion that Mr. Starzecki falsely implicated himself in those wire fraud schemes, right? Not one. Not one challenge.

What did you even find out? Well, because when Wendell Walters came in and testified, he corroborated the very fact that Starzecki had, in fact, paid bribes to Mr. Walters. Accepted. Defense doesn't complain about that. Doesn't say that he's lying to get Wendell Walters in trouble. He bribed Wendell Walters.

So it's an inconsistent criticism of Bogdan Starzecki's testimony. The only time they won't accept Starzecki's testimony is when he implicates them.

For example, they tell you he's willing to say anything to get them in trouble. When Starzecki tells you and testifies and tells you about the agreement and that they're going to pay the legal fees to the firm, what would he have easily have said? What could he have easily have said? I went over to their offices, like what happened on any number of occasions, I sat in a room with Michael Freeman and Lee Hymowitz and we discussed the kickback of \$100,000 and I wrote

the checks for 150,000 or 134,5 and I wrote, I sat down and I wrote the checks.

He didn't say that. And that's why the defense criticism of Bogdan is not correct. It's not fair. It's inconsistent. It's not a reasonable doubt. You can't accuse a man of making up any excuse to get people in trouble and then when he's given, when he sits down to tell you how he knows these people are guilty, he doesn't say all the things he could to make them guilty.

He could have said we had meetings. He could have said I sat in a room with Stevenson Dunn, Michael Freeman and Lee Hymowitz and we had an explosive conversation. Is there anything stopping him from doing that? Of course not. But he didn't know, for example, when he stepped in the room with those government agents to tell them that that wasn't on tape already.

Remember what the lawyers told you again. They're inconsistent: He had time to sit with his lawyers and prepare and think. Well, do you think one of the things he thought about was I better be careful because I don't know what the government knows, I don't know if I go in there and the first hour, I start telling them and accusing people of crimes, that they don't pull out a tape and say, hey, that's not true, here's the tape, you're done, you're gone, you're finished. He doesn't know that. That's what makes his cooperation so

remarkable in a case.

This is not a case like in a bank robbery. Three guys are in a car. They go into the bank and the bank robbery happens. They catch one of the guys later on and then they have a discussion about what the other two guys did and he knows that they don't know. It's not a situation like that.

Bogdan Starzecki walked into a room to talk about crimes that spanned time and place, different developers, different projects, levels of complexity that he knew could be checked by other records. There's documents and other companies. He doesn't know the FBI is going to go get those records, right?

Like the same way when Lee Hymowitz gets on the stand and he finally throws out one of these clients, the Lutheran Synod, and then right after lunch, sure enough, the government is able to get those records to put in front of him to show that he's been inconsistent about the way he does his billing, right? That's what happens when you try to lie and you get caught. Remember?

Lee Hymowitz said, Oh, we did the bills -- he's lying to the agent with what I would call a blow-off lie. Right? He talks to the Special Agents who he thinks is Starzecki's accountant. He said, hey, I don't have those bills. I ripped them out of the book and they're gone. Right?

Summation - rebuttal - Capozzolo

What did Agent Richards tell you? And this is one of the things that Mr. DiChiara had criticized when he was showing you transcripts of the call when Bogdan, when he was directed by the FBI to say things and he was kind of suggesting that Bogdan was saying these things for a particular purpose.

On page 1233 of Agent Richards' testimony, he said, My objective was to test what Starzecki had given -- to test what Starzecki had given me about his relationship. The first part of the call was to see if, in fact, there were any bills or records or any sort to justify the payment that he had made to their firm. The second part of the call was if, in fact, there was a way to show the relationship, was to see if we could have something that they would create to paper that, to paper that or to cover that expense for Mr. Starzecki.

The reason he had him make that call was for the very reason to see that there were no bills. And what happens now? Now, we get, we see the fruit of that investigation when Mr. Hymowitz takes the stand. Right? He's now bound to a story he can't change because it's recorded at a time he doesn't know he's being recorded by the agents.

He tells the story of this mystery book that, again, where is it? Who knows. Mr. Hymowitz had it. He's on the stand. He has no explanation to tell you what happened with this book to even show you that such a thing existed. He rips

pages of the book and says it's gone.

Because he did the blow-off lie on the phone, because it was the little kind of lie that you don't go back and tell Michael Freeman, when you have a discussion about talking to the accountant and these bills and trying to get a document to give Starzecki, you don't tell him, Oh, by the way, I told him about the binder. It's one of those things you're hoping just to push him off to say, This is why I can't give you a bill from four years ago. Right?

What happens on cross? He gets caught because now he makes a mistake and thinks he can get on the stand and look you all in they eye and say, I ripped it out of the binder, it's gone. What happened? Ms. Posa with just a couple of carefully crafted questions says did you use the, you know, the copy paper and then throw it out? No, no, my secretary used a computer.

You can almost see him want to take those words back as he said them because what did that mean? The binder isn't the only place those bills existed. And that's why Starzecki is corroborated and Mr. Hymowitz was proven to be a liar. He was proven to be a liar because his story wouldn't play out and he got caught. Where is that computer now? That computer existed back in October of 2011 when he got arrested, that worst day of his life. Where is that computer? That firm stayed together for a period of time. Gone. Missing. But

Summation - rebuttal - Capozzolo

we're left to believe, as he was lying to the accountant that day, that that binder, ripped out pages, that was the only place to find any record of these bills.

Then what happened. The government found out and confronted Mr. Hymowitz with the fact that he had -- there's a place called Iron Mountain Storage where they send client records. That's another place where you can send bills and keep them. Well, if they go out of the way to take client files, store them, pay a company lots of money to keep them, does he give you an explanation of why he wouldn't also keep the bills?

You saw the bills from the Synod, Lutheran Synod where he's breaking down specific amounts and specific times on letterhead produced from a computer but yet, these bills don't exist and when he's talking to Agent Richards on the phone, they just don't exist.

Think about also what Bogdan Starzecki didn't know. Bogdan Starzecki didn't know George Armstrong was a cooperator. He didn't know that George Armstrong was going to talk to Stevenson Dunn, but remember what Bogdan Starzecki tells you. It was a \$450,000 kickback and he stiffed them for 150. Just the way he did with Wendell Walters. Very consistent. Right?

But what do we get to find out? The government didn't just stand in some lighted spot. I mean, that's a nice

Summation - rebuttal - Capozzolo

theatrical way to describe it. George Armstrong was not Bogdan Starzecki. He's in another part. He's in that dark area where Mr. Sercarz would have you believe we're wandering around, feeling around not knowing what we're doing. But they did. They did know what they were doing. They didn't want to just rely on Bogdan Starzecki. So they sent George Armstrong in to meet with Stevenson Dunn.

You hear in very graphic terms how Stevenson Dunn felt about Bob Starzecki and he starts telling George Armstrong about their relationship. And what does he say? He stiffed me for the 150 fucking large. And that was \$150,000. Doesn't that match up just pretty close with what Bogdan Starzecki told you?

Bogdan Starzecki, when he sat down with the government, couldn't have known that George Armstrong was going to go into a meeting with Stevenson Dunn and get numbers that match up exactly to what he's testified in this courtroom and what he told the government in those proffers. He can't know that. And when the defendants' arguments about Starzecki are not consistent, it can't be reasonable doubt.

For example, they keep harping on the fact that Bogdan Starzecki is greedy, he wants money, he does everything for money and that's true. The government agrees with that. The government agrees and he sat here for all that time testifying, telling you, I did it for money, I did it because

I wanted the money, I did it because I wanted the money. I don't know how many times he said it. You can look at the transcript, right? Numerous times.

Then what the defense wants you to believe is Bogdan decides he is going to make essentially a \$140,000 contribution to the law firm of Hymowitz & Freeman for nothing.

What did he do with the first kickback payment to Stevenson Dunn? He did not give him that check until he had a signed contract in his hand. He didn't give him it. He didn't give the firm the largest portion of that kickback money, the \$100,000, until he had the retainer agreement. He's not giving his money away for free.

When he paid the bribe money to Wendell and he had already, already been on the job, he was already making money, he was comfortable enough to come back and not pay Wendell the rest to negotiate down and get a pass until the next project. And that's what he did in this job.

What did you find out? You found out that that's consistent. Right? That's what Wendell Walters -- because Bogdan Starzecki has no idea that Wendell Walters is going to sit down with the government the day after he's arrested and talk to them about how he got bribed by Bogdan Starzecki. He doesn't know what Wendell Walters will or won't say when he sits down with the government.

Summation - rebuttal - Capozzolo

And that's, again, what makes it so remarkable about Bogdan Starzecki's cooperation in this case. He walked in the room with this much charge and he walked out with a lot. He walked out with 140 years' worth of charges not knowing what the government would know, find out or do or make him do. Remember, he told you they made him go out and do 28

Another problem: He's willing to say anything about anyone. Right? What did Bogdan tell you? He went through all those lists of projects and I asked him at the end of that, were those the only projects that you did? Oh, no, I did lots more. Did you pay kickbacks on those jobs? No.

recordings against numerous people.

So you have to beg yourself the question. Remember what Mr. Sercarz says? He knows that every single person he gives up gets him in more trouble and he needs to name more people to get out of trouble. Why didn't he name others? Why didn't he name all those other people he didn't name?

He tells you that one of the people he named was a close personal friend, Eddie Torres. He gave up someone who had a family social gathering with and was close with. But why didn't name some other developer he didn't have a close relationship with and leave Eddie Torres off the list? Why didn't he do that? Why doesn't he name every single developer he ever worked with if he's so unreliable, untruthful and not careful and not truthful with the government? Why doesn't he

do that?

The one begging question that these, the defense attorneys in their closings haven't indicated at all, haven't demonstrated, haven't given you even a reason to doubt Bogdan Starzecki's testimony about it, why them? Why does he name this laundry list of corrupt people and at the list of those, I don't know, 15, 20 whatever the number of names were that he lists, he adds three innocent people. Why does he do that? What is the reason?

You heard hours of defense arguments, hours of defense arguments. There is not one piece of evidence in all of this that demonstrates to you or gives you a reason to doubt Starzecki's testimony about them because there's no reason to believe he had a motive to lie about them as opposed to anyone else.

And, again, you have to believe he's just named all those 15 names on a prevailing wage charge that he wants to get out from under and he's going to risk it all. He's going to throw his whole cooperation agreement on the chance that something in that investigation blows up and demonstrated he's accused innocent people. Not just exaggerated claims. Not just saying, I bribed -- I gave Wendell Walters \$3 million when maybe it was 1 just to make Wendell look bad.

To accuse three innocent people of a crime, he has no idea that the government could investigate and figure out

that's untruthful. He has no idea what the government will do. He has no idea.

Remember. Lee Hymowitz: You guys in the government get everything, right? If it's one thing I learned, you get everything.

That's what he risks when he goes in the room with the government and tells all the names. He risks only for him. And that's why the government isn't counting on Bogdan Starzecki's good nature. We're depending on a contract that says if you lie, you are going to jail. That's a self interest. That's what Bogdan Starzecki works on: His self interest. That's what this agreement says.

This agreement doesn't say if you name 20 people, you get a letter but if you name 18, you don't. It says if you don't tell the truth, you go to jail. If you don't cooperate fully and this government and the office thinks you're lying, you go to jail. No appeal. No nothing. You're done. You're finished.

Again, Wendell Walters goes in to the government the day after he's arrested. Why does he accuse Stevenson Dunn of bribing him? Why does he do it? Why does he accuse him when he lists and names all these other people who have paid him bribes? Why does he name all these other people and name Stevenson Dunn, someone he knows from high school? What is the motive? It's not consistent. It's

not a consistent criticism to say he's willing to do everything.

Wendell didn't name every person he's ever worked with as a developer. I mean, if Bogdan knew a lot of developers, Wendell oversaw the whole program. He had dozens of developers to pick from. He could have picked anyone. Why didn't he pick one that he didn't know or didn't have a close relationship? Instead, he named Stevenson Dunn.

And what did Wendell Walters not know? Wendell Walters didn't know that George Armstrong would sit, sit with Stevenson Dunn and, again, in very graphic details, he talked about the charcoal gray BMW, the stack in the wine case, all of that. Doesn't know that's going on. Risks his entire cooperation agreement because of that.

And let me suggest something else about Bogdan Starzecki's testimony. You obviously are going to look at each defendant individually, correct? That's what the Judge is going to tell you and you're obligated to do that and I tell you to do that because that's what you're doing. You're judging three individuals in this case.

Consider this. Bogdan Starzecki has no idea who's going to be on tape and who's not going on tape as to what other investigative techniques the government did. Right? So you find out and you may go back there when you deliberate and say, look, we've got Stevenson Dunn on tape bribing him. But

what does that tell you? It tells you that Bogdan's testimony is consistent.

When he talks about the 150 large that Bogdan had already told the government about and then George Armstrong goes out and gets a tape that matches exactly what Bogdan Starzecki said and that makes Bogdan Starzecki -- that makes Stevenson Dunn guilty of what Bogdan said. That is a reason to find Bogdan Starzecki's testimony credible. It has been corroborated.

When George Armstrong gets Stevenson Dunn on tape talking about bribing Wendell Walters just like Wendell Walters said he was bribed, when he gets Stevenson Dunn on tape talking about handing him money and wine cases and taking kickbacks and saying he's annoyed at Wendell because he's got his hand out and wants more and is piggish. Remember, he says piggish? Which also tells you, by the way, it wasn't that Stevenson Dunn didn't to pay any bribe. He just didn't want to pay that much.

(Continued on next page.)

MR. CAPOZZOLO: (Continuing)

When you find those things out, when you know then that Bogdan Starzecki is telling the truth about Stevenson Dunn, you can start to form your opinion that Bogdan Starzecki is a credible witness. Once you find him to be a credible witness, other allegations, he's credible. He's a credible witness. His credibility has been tested

It got tested different ways. But just remember, you have to look at it at the time it took place. When Bogdan Starzecki made these accusations against these developers, against these developers, against Stevenson Dunn, against Michael Freeman, against Lee Hymowitz, he had no idea what was going to happen two years down the road. He had no idea what recordings would come out. He had no idea what records the government would find

Mr. Sercarz made the argument that there has been some argument in addition to Mr. Sercarz about what -- whether the requisitions are accurate or whether they are not accurate. The government's theory on this case has been consistent through the whole time. I suggest to you that some of the cross-examination by the defense attorneys has mucked this up really

It has always been the government's theory that the bid amount was higher than it should have been, right? So Bogdan Starzecki told you, I increased my bid by hundreds of

thousands of dollars. Gets the bid

The contract price was five point something million, we will say 5.8 million for now. All that happens in the requisitions is they take that bad number and it gets put on the top. It's the first line on all those requisitions.

Remember, the contract sum, the contract sum, the contract sum on all those requisitions. The rest of the requisition says ten percent of the job is done, 20 percent of the job is done. Whatever the percent is. Then they take that percent and they multiply it by that bad number. So every one of those requisitions is bad

The 20 percent might be accurate. The amount of the job that has been completed is accurate. But the bid amount is wrong. So 20 percent of a bad number is a bad number, right? If it should have been 20 percent of 5.8 million, if it was 20 percent of 5.8 million when the bid should have been 5.4 million, what happens? Every requisition you are multiplying by a number that's too high. So every requisition amount is going to be higher. Therefore, every requisition is a lie

The amount of the job that was complete, that wasn't the government's theory. It is the bid amount that was too much

And there is something about the bid amount. There was some testimony about that, if you remember. Again

documents that Bogdan Starzecki wouldn't necessarily have known existed or would have been shown later on.

His bid I think was around \$5.9 million. He told you that the architect pushed back and said it was too high and got knocked down to \$5.800,000, right? Tell us -- remember all that cross-examination about the architect's reviewing and making analysis of the bid amounts. There was some indication that the architects thought the amount was too high. But what did Bogdan tell you? He increased the bid by hundreds of thousands. Even though the architect pushed back a little, the bid was still too high. The government still lost money on that bid

But when the defendants tell you, there is no indication at all that this bid was too high, that's not true. The bid was reduced. His bid was 5.9. It got pushed down by the architect. It just tells you that when the defense attorneys say something in summation, you have to look at what happened actually during the trial

Now, there is one kickback of \$450,000 that gets broken up into the two payments between Stevenson Dunn and the law firm. Stevenson Dunn calls Mr. Rasheed to the stand. He called him to the stand before Mr. Dunn had testified, if you recall, and he asked him questions about what he did on the job and how he had worked for Bogdan Starzecki on that one particular project. Ms. Posa put up the testimony that said,

I gave him invoices and I got checks, if you recall.

What is the most glaring thing that Mr. Rasheed did not say when he was called by Stevenson Dunn and asked questions about his participation? What is the basis for the defendant's whole claim that the money he paid, that Bogdan Starzecki paid Stevenson Dunn was not a kickback? He said New World Order was owed \$150,000. Remember? He said that's what the -- that's what the 150 large was for. He said, it was the money that was supposed to go to Mr. Rasheed at New World. Right?

He's on the stand. He's being questioned by Mr. Dunn's lawyer. Does Mr. Rasheed ever confirm Stevenson Dunn's testimony in this case? That he was owed \$150,000 by Bogdan Starzecki? No. All Mr. Rasheed says, I got -- I wrote invoices and he gave me checks. He didn't say I got stiffed for 150,000.

He also didn't confirm the other thing that Mr. Dunn told you, right? He also didn't confirm to you that when the money did come, that he got it from Stevenson Dunn Marcus Garvey Corporation, a shell corporation, years after the work was done. Did Mr. Rasheed say that? No

There was one person who could have corroborated Stevenson Dunn's argument that this was not a kickback, and that it was payment for work done on that Lexington Avenue project. That person didn't say that was true.

Rebuttal Summation - Capozzolo

There is no reason to doubt Bogdan Starzecki's story. Mr. Rasheed did not back up what Stevenson Dunn stood there on the witness stand and told you

That was the only witness who could have backed up what Stevenson Dunn said that came into this courtroom. That was someone who is out in the dark, that the government didn't look at. They called him as a witness. What happened under these bright lights? He didn't say that there wasn't -- he didn't say that Bogdan Starzecki owed him 150,000. That's the only reason Stevenson Dunn is telling you that this man is paying him money, that that man was owed \$150,000. He came in to court and he didn't even say there was a debt, didn't say there was a debt

There is a retainer agreement that Mr. Hymowitz tells you he drafted, claimed the only reason it didn't have the word draft on it is because there wasn't a draft stamp in his office. Doesn't make sense.

Let's start with the conflict issue because

Mr. Hymowitz tells you that the reason he did this agreement
was because he was going to get some work for Bogdan Starzecki
and Mike Freeman was going to do his legal work. Bogdan

Starzecki already told you he had other lawyers to do that. E

didn't need those men to do that legal work

Second, again, full concession, no legal work is ever done. You'd have to believe that Bogdan Starzecki who is

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Rebuttal Summation - Capozzolo

not willing to give money without contracts in hand gave this firm \$140,000 without a contract in hand. Didn't have anything, didn't get anything out of and was willing to part with \$140,000. It's totally inconsistent with what they are claiming Bogdan Starzecki would do and the way he acted. It is not consistent. It's not a reasonable doubt

Defense counsel said that Lee Hymowitz relied on his conversation with Mike Freeman. But that's not true. They told you their allegation was that Bogdan Starzecki talked directly with Lee Hymowitz about hiring him to do jobs. Why did he have to rely on Mike Freeman for that discussion? He does that because he wants to separate himself from this retainer agreement. He doesn't want to tell you that he had an opportunity to have those specific conversations with Mr. Starzecki or else this agreement would have been different and he couldn't just claim it was a draft.

There is a funny thing about that story, right?

Remember how Lee Hymowitz told you, I did it on January 2nd because Mike Freeman wasn't around and like the house was on fire. When Mike Freeman tells to you do something it's got to get done.

What did he tell you he did? He took the agreement and he told you he did less than 15 minutes worth of work. It was like a cut and paste job. He said he put the name, the amount of money and then he printed it out, put it on Mike

Freeman's desk

If it was such a rush what was it a rush to do? To get to Mike Freeman? So Mike Freeman when he did get to the office, it would have saved him seven minutes? Mike Freeman was going to have to read the agreement and change it anyway.

Lee Hymowitz is telling you, I wasn't capable of writing this retainer agreement. Well, if all he did was cut and paste the name and the thing and Freeman would have no idea what Lee Hymowitz did because Hymowitz told you he didn't have any discussion with Mike Freeman about it, what would that mean you would have to do if you are a careful lawyer sitting down preparing a retain are agreement, a legitimate one, that you are sending to your client? You'd have to read every line in the agreement to see if Hymowitz changed anything. You have to edit it. What little editing Hymowitz did didn't save Freeman any time. So I don't understand why Mr. Hymowitz doesn't change it.

Isn't it amazing, of all the gin joints in the world, of all the retainer agreements that Lee Hymowitz does and he says I did this one for Mike Freeman. He is the one who does these. I don't do these. Of all the ones he prepares it just happens to be the one that involves a kickback. It happens to be the one that the secretaries don't draft. It happens to be the one that Lee Hymowitz drafts and it happens to be the one that later on, not knowing

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Rebuttal Summation - Capozzolo

Mr. Hymowitz, he's later going to be accused if being tied up in a kickback

How did Bogdan Starzecki know who was going to prepare that contract? How is he going to know? He wouldn't have known. Mr. Hymowitz prepared a retainer agreement to cover the kickback payment

Again, on the purpose of this -- the purpose of this kickback payment, remember, he tells you it's to go to Lutheran Synod, to help -- some of that. Mike Freeman would be available to do the legal work. First of all, why wasn't there a non-legal contract drafted? Right? He told you oh, that's Mike Freeman's work. If the whole purpose was Bob getting Lee to go get bids from places like Lutheran Synod, why wasn't the agreement with Mr. Hymowitz? It is because they wanted to cover his legal fees. They wanted to use a retainer agreement. That's what Bogdan Starzecki told you he wanted from them so they prepared a retainer agreement

The problem for Mr. Hymowitz is, he was working for both sides. This -- he could not have been in this arrangement. He told you and he -- you only hear this testimony because the government ran out and got those bills. That he was sitting down with the Synod and giving very specific instructions on how to do the projects he was proposing that Bogdan Starzecki might bid on. So he's giving the Synod special information on this is how you get this job

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Rebuttal Summation - Capozzolo

done, this is how much it is going to cost. Now he's getting paid tens of thousands of dollars to do that. Now he's gong back to Bogdan Starzecki, the guy who might bid on them. Now he's got all this information that Lutheran Synod is not going to want the bidders to know.

The whole point of the bidders is that you are just supposed to get the lowest price. But now you have someone who has all this information about what the Synod is thinking. It's not -- it wouldn't be a fair bid. You can't have Lee Hymowitz representing both the person who is going to give the contract and then giving advice to the person who is going to bid on that contract. You can't do it. It's a conflict

You are getting someone to pay a vote. And here, I will demonstrate the easiest way why that would be a conflict. They pointed out in those bills where Lee Hymowitz was calling some of the contractors and he billed for the time that he was talking to people about doing the contract and stuff like that. How did he bill his calls to Bogdan Starzecki? Did he bill the Synod or did he bill Bob Starzecki? Or did he double-bill? What would it be?

He was playing both sides. But he has to come up with a story to explain this retainer agreement that makes no sense. He has to explain a retainer agreement that Bob Starzecki doesn't need because he's had lawyers for years to do construction work. He has to come up with an explanation

to cover fees that have no explanation, that have no explanation.

I want to talk about some of the character evidence. Mr. Sercarz, again, with much raised voice, and almost outrage, attacks the government for attacking Mr. Hymowitz's generosity. Well, the person who brings up Mr. Hymowitz's generosity in this case was Mr. Sercarz in the opening. He's the one who proposed to you and the counsel who were discussing these things said it wouldn't be in his nature to commit these crimes because he's so generous. He then turns around and criticizes the government when they bring up someone who has a slightly different view of Mr. Hymowitz's generosity

Lee Hymowitz brings you the character witnesses he wanted to show you that showed that in Nassau County he's got a great reputation. I'm sure some day there is a Nassau County Day parade, Lee Hymowitz might be in line to be the grand marshal. Okay. But in Bed-Stuy and in New York City he's not. And how did we find that out? Well, think about it

Nassau County is where Mr. Hymowitz lives. That's where his friends, where his neighbors, the people he socializes with, the people where he cares about his reputation. At his congregation, he's standing arm and arm with the rabbi, doing good things.

At -- at Mr. Fellin's testimony for a second there,

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Rebuttal Summation - Capozzolo 2344 1 I was going to be drawn back because what Mr. Fellin say? 2 talked that there was an organization called Volunteers 3 Do you remember that? Was anything about 4 Mr. Hymowitz anonymous? Absolutely not. He was at the 5 forefront of these activities. Accused the government of saying that the defendant is just trying to take credit for 6 7 How does he get a certificate from Congress? Did 8 Congress on its own just one day decide to honor Lee Hymowitz 9 or did somebody nominate him? 10 These are things he did to improve his reputation in his community among his friends 11 12 MR. SERCARZ: Objection. There is no evidence to 13 this. Objection. 14 THE COURT: It is up to the jury to determine whether there is evidence or not. It will be your 15 16 determination. 17 MR. CAPOZZOLO: There is no evidence that Congress 18 was present for any of these charitable events. So you'll 19 have to make up your mind how Congress found out about 20 Mr. Hymowitz's charitable acts. What's the other difference between the character 21 22 witness, the character witnesses the defendant called versus 23 the negative character witness that the government called? 24 all of the charitable events Mr. Hymowitz called, his money 25 wasn't at stake. Right?

What did Ms. Sicignano say about his generosity?

He's very generous with my money. What did she say about his honesty? He lies with impunity.

And what did Mr. Hymowitz's counsel tell you? He's a lawyer. You get into issues. There is business. There is lots of things, things go wrong. He does a lot of different transactions.

Well, this transaction has been going on for 27 years with Ms. Sicignano. This is not someone who is engaged in one single matter that happened in a brief period of time and there is a misunderstanding and they don't like each other. This is a woman who has had 27 years of having interactions with Mr. Hymowitz and has every reason to have formed a well formed opinion.

And notice that there weren't character witnesses from New York. There weren't character witnesses about the way Mr. Hymowitz engages in his business, which is what this case is about. This case is about how Mr. Hymowitz behaved during his business activities.

(Continued on next page.)

(CONTINUING)

MR. CAPOZZOLO: And think about the hours you spend in your life on your job; right? If you don't work any overtime, it's only eight hours a day. You sleep eight hours a day. And you hear character witnesses of where he's goes when he goes home, places where he wants his reputation enhanced. You don't hear character witnesses about what he's doing in New York City. You don't hear character witnesses from Bed-Stuy. You don't hear character witnesses from HPD. You only hear character witnesses of the people Mr. Hymowitz wanted to show you.

And the criticism of Mrs. Sicignano, the criticism that she's flighty? I think it was insulting. You saw her demeanor. Did she appear flighty? Did she appear inconsistent in her opinion of Mr. Hymowitz or did she seem very clear? Has she formed a rock solid opinion of what Mr. Hymowitz's character was for generosity and honesty? He lies with impunity.

He was on that stand and more than once told you I never signed a check for the development company. Never signed a check. He didn't say maybe. He didn't say more or less. He didn't qualify his answer when a qualified answer would be called for. He hoped the Government wouldn't call him on his lie and he got caught. He tries to lie with impunity.

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Rebuttal Summation - Capozzolo

I ripped it out of the book and threw it away.

Didn't tell the accountant about the computer that those bills were originally printed on. I ripped it out and threw it away. There was no way I could get those bills.

He tells you he's blessed and tells you that all throughout all these trials and tribulations he's still blessed. He's had a lot of time to come up here and tell you he's blessed and thought about that. But when he is asked questions about things he didn't know he was going to be asked about like where's the computer that printed the invoice, he wasn't so blessed. It wasn't a blessed answer. It was an inconsistent answer.

And then what does he fall back on? I don't know how to get that out of the computer? You know, that's a childlike response. That's a response you get when you're caught and you honestly don't have time to formulate an answer. That's an answer you say when you get caught in a lie. It was like the Bill Cosby joke that the child's caught taking the cookie of the out of the cookie jar and the child pulls the cookie out of the cookie jar and the dad says, are you stealing a cookie? And the child says, no, daddy, I got it for you.

This is the kind of answer Lee Hymowitz gave. The dog ate my homework. The computer, I don't know how to get it out of the computer. But then what is he asked the next

Rebuttal Summation - Capozzolo 2348 question, he has to answer truthfully; right? Because he 1 2 can't lie about this. 3 You use computers all the time? 4 Yeah. So, how do those, could those answers at all be 5 6 consistent? They have to be inconsistent and they're 7 inconsistent because Lee Hymowitz's story was tied down at a 8 time when he didn't know it was going to be recorded, and he 9 didn't know it was going to be played in a room like this, a 10 very well-lit room, and he didn't know he would be put in a 11 position where he wouldn't be able to take that answer back. 12 Had that conversation not been recorded, had 13 Agent Richards not gone to the lengths to try to corroborate 14 Bogdan Starzecki, you never would have heard it. You never 15 would have heard it. I suggest to you, Mr. Hymowitz got 16 pinned down by that conversation because Agent Richards did 17 exactly what he set out to do and his objectives in having 18 Bogdan Starzecki make that call. 19 THE COURT: Counsel, it's 5:00 o'clock. 20 MR. CAPOZZOLO: Judge, I have a few more minutes. 21 THE COURT: A few more minutes. We'll hold out for 22 a few more minutes. 23 MR. CAPOZZOLO: All right. 24 THE COURT: I would like very much to finish the summations this afternoon, so if the Members of the Jury can 25

hold out for a bit longer and then we can finish it.

MR. CAPOZZOLO: All right.

So, I'm just going address some of the comments made by Counsel on the Stevenson Dunn case.

Counsel for Stevenson Dunn addressed a couple issues I want to address quickly because they actually apply to the other defendants as well. One of the comments that Mr. Dunn's Counsel made was that he didn't get his money out of the projects. He tried to suggest to you that he somehow lost money. That evidence was rejected clearly by several witnesses. One was Daniel Magidson. He told you specifically on the Bed-Stuy project, remember? He said that the closing was delayed for several months, so what? They could make closings on a number of the projects that they did have buyers for so they could get their fees.

Also, on the Hancock project. That project, if you recall, George Armstrong was required to make \$120,000 payment to the developers to get out of the project. There is no evidence that they lost my money. What the evidence is, is that they took kickbacks and then when they didn't do their job as developers, they got kicked off. They got knocked off Lexington, they got knocked off Bed-Stuy and they got knocked off Hancock.

Think about what developers really have to do.

Their job is do actually not that hard until the end of the

development. They get the -- they put in, they do the application, they fill out a little form and then they get the project. Then they hire a general contractor who signs the contracts and the general contractor does all the work. The construction loans come in, they sign the requisitions, the money gets passed along, but what happens at the end of

7 project? Once the apartments are done, they have to sell

them.

And do you remember Stevenson Dunn's testimony about this when he got knocked off the project? He tried to blame the marketers, who he didn't identify. And I asked him, but they didn't replace the marketers, they replaced you. And he had to say yes. Because it's the developer's job to sell those apartments. And remember what Magidson said about the reason they got kicked off the Bed-Stuy project? And let me see if I, I think that I have here. He said that they, the responsibility was on them to get the -- here, I have it.

On page 1184. And from our position, and I believe they felt otherwise, that we felt they were not on top of this process for putting all the documentation together. And therefore, by the time they would get the missing documentation in, the loan commitments would expire and the buyers would then have to go back and reapply for the loans, which became harder and harder to get. I don't think the actual sale prices were ever the issue.

VB OCR CRR

Rebuttal Summation - Capozzolo

Again, Stevenson Dunn sat in that chair and lied. He said we withdrew, remember? He said we withdraw because the market turned bad. Magidson told you that wasn't the reason. It wasn't the market. They just didn't get their act together. They got their kickback and they walked away from the project on the Bed-Stuy case.

Stevenson Dunn talked about talking about the Anthony Armstrong conversation, just a couple of quick things.

Obviously, Anthony Armstrong, the fact that he was threatened was fully corroborated by those text messages, which I'm not sure it was clear in the closings that the statement was those text messages were made well before George Armstrong was cooperating, well before the FBI even knew such an investigation existed. And you have George Armstrong telling Wendell Walters that Stevenson Dunn threatened his family, so that corroborates Anthony Armstrong and the fact that he reported it to his brother, exactly what he said, and corroborates he said he didn't go to the police.

Armstrong went to who? The corrupt Mr. Walters to try and take care of this problem. He passed the message to him. This debt wasn't between Wendell Walters and Stevenson Dunn. It was between George Armstrong and Stevenson Dunn. George Armstrong tells Wendell Walters because why? Because Wendell Walters is a corrupt member of HPD. It's part of the RICO. It's Stevenson Dunn having bribed Wendell. It's George

Rebuttal Summation - Capozzolo

Armstrong's corrupt relationship with Wendell Walters. And it's why Stevenson Dunn is guilty of racketeering. He is part of the enterprise by bribing Wendell Walters. By bribing Wendell Walters, he's putting him in his corner and he's trying get HPD to work on his side. That's why. That's why Stevenson Dunn is guilty of racketeering.

Now, there was the comment about the fact that

Anthony Armstrong referred to, I guess it was black Muslims.

The only thing I would point to that is consistent that you can look to is the Stevenson Dunn conversation with George

Armstrong where in that conversation about the threats, George

Armstrong talks to him about what Stevenson Dunn was going through at the same time and it corroborates with Anthony

Armstrong.

Stevenson Dunn says when they're talking about that time and he says my son got roughed up and Stevenson Dunn specifically says that's when I was walking around with soldiers. Again, is that the conversation -- is that a business conversation about a legitimate debt or is this a conversation about resolving a prior extortionate threat that Stevenson Dunn had directed at George Armstrong and his family?

The investigation in this case demonstrated that HPD had become a corrupt organization starting with Wendell Walters and the investigation revealed that Stevenson Dunn

Rebuttal Summation - Capozzolo

paid Wendell Walters money, bribed him, engaged in a wire fraud scheme with Hymowitz and Freeman in which he took money from Bogdan Starzecki as part of their attempt to steal money from HPD, hundreds of thousands of dollars depriving HPD of money that could have used for other projects in other places.

Bogdan Starzecki was brought to the Government through an investigation that uncovered a huge nest of corruption. The three defendants behind me are not innocent. They are guilty. The evidence in this case has overwhelmingly demonstrated their participation in this. Wendell Walters corroborated that, corroborated the fact that Bogdan Starzecki bribed him, corroborated Bogdan Starzecki's account of the corrupt activities taking place at HPD.

And the last area I want to address is the role of the attorneys in this case, Mr. Hymowitz and Mr. Freeman.

Mr. Sercarz told you that the Government only looked at the light of one spot, implying Bogdan Starzecki was the center. It's hard to imagine in a case where Exhibits number in the hundreds and there are other cooperators who did recordings, that that argument can possibly be taken seriously. The Government did and took steps, as evidenced by Agent Richards's testimony, that they went at great lengths to corroborate or disprove any of the allegations made by Bogdan Starzecki. They conducted numerous investigative steps making recordings, getting documents, conducting numerous proffers

and investigating the allegations made in this case. To suggest that the Government conducted this investigation in the dark flies in the face of everything that you've seen throughout the last three weeks.

What the last three weeks have demonstrated that the FBI and the Government have uncovered massive corruption depriving HPD of a legitimate and a process of integrity for providing these people with affordable homes, depriving taxpayers of the use of that money to be used in accordance with its intention to provide affordable housing for people in New York City. To suggest anything contrary to that is just, simply flies in the face of all the evidence in this case.

Bogdan Starzecki's allegations were proven true through the testimony of Wendell Walters, the recordings of George Armstrong, the bank documents and when the defense chose Mr. Dunn and Mr. Hymowitz to put on a case, you can also consider the lies, the inconsistencies, the confrontations where Mr. Hymowitz, for example, stated repeatedly that he hadn't taken checks, hadn't written checks from the SML Development Company and then was presented with them. He's presented with checks that show on the same day he's taking money out of SML Development and he's writing 23,000 to him and 23,000 to Mr. Freeman.

(Continued on following page.)

Summation - rebuttal - Capozzolo

MR. CAPOZZOLO: (Continuing) And for all that cross-examination about the bank check, the bank signature card, where he says anybody can be vice president, well, not everybody gets to take \$23,000 out of a company.

And remember, what -- remember what Lee Hymowitz did as well. Lee Hymowitz wrote an opinion letter in the course of the application to become, to have that development company run the Bed-Stuy project in which he said he had no financial interest in the development company. That was a lie. That was a lie. That was a lie. That was a letter he sent. It wasn't a draft. It wasn't written by Michael Freeman. It was written by him. And when he lies to them and says he doesn't have a financial interest, when he lies on the statement to the bank and calls himself the vice, when he calls himself the vice president, it's demonstrating that he has an interest in that development company. It's demonstrating that he knows full well.

If this is a legitimate business, if this is a legitimate relationship, if this is a legitimate situation not intending to rip off HPD, why are they making all these false statements? Why are they -- why is he signing checks and then claiming he doesn't sign checks? Why is he taking money out of a development company that he doesn't have a financial interest in? And why is he telling, why is he telling HUD in an opinion letter, I have no financial interest in this company?

Summation - rebuttal - Capozzolo

Why is Stevenson Dunn, in an individual disclosure form, telling, telling the government that, denying that any of his companies will have any conduct, will conduct any business with, with HPD? Why does he leave out 334 Marcus Garvey Corporation? Why in two subsequent statements does he tell HPD still don't have any change in that statement, still don't have any change in that statement, those affidavits have no change? Why does he say nothing's changed when even after he filled out that form, the original individual disclosure form, he starts getting those payments from MCR to the tune of over \$100,000 and then doesn't tell HPD Marcus Garvey Corporation is getting money from the, money from HPD as part of the development?

If you remember, in the beginning of my opening, I told you that the case goes from the -- the money goes from the government down to the developer, down to the general contractor and it doesn't flow up, and that individual disclosure form, that individual disclosure form is precisely geared to that. It's meant to get the developer to say are you going to have any other entities doing business in this project that we should know about. And why is that? Because an entity can be created by anyone. It can be created anywhere. You could have any corporation. There's no phone book where you get to look up and see where every entity in the world is.

Summation - rebuttal - Capozzolo

The government specifically wanted to know of Stevenson Dunn do you have any companies that are going to do business with this project that we should know about and he didn't tell them. Then when he filed an affidavit of no change, he confirmed it even after his company had taken money.

Why would legitimate businessmen file these documents if they didn't intend to rip off the City? Why did they file these things?

I would also tell you that in evidence are individual disclosure forms by Michael Freeman. They also don't disclose the existence of 334 Marcus Garvey, just like Stevenson Dunn didn't. They're in evidence. If you want to ask for them, you can review them. He didn't do it either.

HPD required the developers to file these statements both individually and for the entities. They're part of the documents before you. Neither Mr. Freeman nor Mr. Dunn told the government, told the government at all about the entity, the vehicle for these kickback payments, the ones that they intended to take all the kickback payments.

Mr. DiChiara did mention a word that I thought is very valuable. He mentioned the word "buffer." And in relation to these two lawyers, I ask you to look at the three defendants and identify which one was the buffer in this case.

The two lawyers wanted to use Stevenson Dunn as a

Summation - rebuttal - Capozzolo 2358 1 buffer. They wanted Marcus Garvey Corporation to be its 2 buffer to accept the kickback payments. They had numerous 3 other ways to get the money from Stevenson Dunn once that was 4 accomplished. The thing that screwed it up is that Bogdan 5 Starzecki, when Stevenson Dunn couldn't even give them 6 invoices for the kickback payments, went to them and said, 7 look, I've got to give you some of the money because I can't 8 give this company all the money. 9 Why did that make sense? Because Bogdan wanted the 10 invoices to cover it. So they made the lawyers do the 11 retainer agreement to cover some of the money so he could do 12 what he did in all these other projects. Totally consistent 13 with what he told you in that long litany of cases when he 14 told you about all the kickback payments. He told you, I got 15 invoices to cover for it. 16 What did Bogdan Starzecki not know again? That when 17 George Armstrong would talk to Stevenson Dunn, what was he 18 asking Stevenson Dunn for in those conversations? Can you get 19 me the invoices if I give you the money. Dunn hadn't given 20 him invoices either. 21 It just goes to prove to you that Stevenson Dunn was not providing the invoices. It corroborates Bogdan 22 23 Starzecki's reason for going to Michael Freeman and saying, I --24 25 MR. DiCHIARA: I'm going to object. That's not what

Summation - rebuttal - Capozzolo 2359 he said. 1 2 THE COURT: The jury will determine that. 3 MR. CAPOZZOLO: So George Armstrong is asking for 4 invoices to cover debts from many years ago. Remember, 5 Stevenson Dunn needs that money. It's a \$50,000 debt from a long time ago. The check was bounced. There were the 6 7 threats. Time had passed. 8 Then George Armstrong, when he begins cooperating 9 with the government, goes back to Stevenson Dunn and says, All 10 right, I'm going to come up with some of the money, and he 11 gives him the \$7,000 and he tells Dunn I need invoices for it. 12 That meant that George Armstrong had never gotten invoices for 13 that payment. That meant when George had paid him that, paid 14 him that kickback money back then, Stevenson Dunn hadn't given 15 him invoices either. 16 MR. EVANS: Objection, Your Honor. That's not in 17 evidence. Mr. Armstrong didn't testify. 18 MR. CAPOZZOLO: If you listen to the recordings --19 THE COURT: Counsel, I am just going to advise the 20 jury. 21 There have been these objections about what is in 22 the evidence and not in the evidence. That's entirely up to 23 you what's in the evidence and what inferences to draw from 24 the evidence and I will be giving you more detailed 25 instructions about that later.

Side Bar 2360 1 I just ask that Counsel --2 MR. DiCHIARA: May we approach for a second? 3 THE COURT: Fine. 4 We need to take a recess for the jurors. THE CLERK: All rise. 5 6 (Jury exits.) 7 (The following occurred at side bar.) 8 THE COURT: How much more do you have? 9 MR. CAPOZZOLO: Very little, Judge. I was going to 10 move on. THE COURT: Five minutes? 11 12 MR. CAPOZZOLO: Five minutes. 13 MR. DiCHIARA: That might end it because I was going to say the rebuttal summation is not supposed to be longer 14 15 than the summation. 16 THE COURT: Well, that's only -- wait. Excuse me. 17 If that's the objection, it's overruled. I mean the original 18 summation was very concise and brief. That was their choice. 19 The rebuttal has to deal with three defense summations and 20 though they were good about estimating how long you would be, 21 some like you, Mr. DiChiara, were not accurate about 22 estimating. So I certainly don't think anything is improper 23 about the length. It's just we have the jury and we need to 24 let them go home. That's it. MR. SERCARZ: They just took a moment to use the 25

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Summation - rebuttal - Capozzolo
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    facilities?
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              THE COURT: Yes. Do you need also?
              MR. SERCARZ: It will take me 30 seconds.
 3
 4
              THE COURT: All right. I will wait here, Counsel.
    When everyone is back and the jury is ready, we will start.
5
               (Recess taken.)
6
7
               (In open court; outside the presence of the jury.)
8
              THE COURT: Everyone is back? Thank you.
9
               (Jury enters.)
10
              THE COURT: All right. Members of the jury,
    Mr. Capozzolo assures me he has just a couple of minutes to
11
12
    finish and then we will be finished for the evening.
13
              THE CLERK: Thank you. You may you may proceed,
    Mr. Capozzolo.
14
15
              MR. CAPOZZOLO: Thank you.
16
              So just to wrap up a little bit, the conversations
17
    between Mr. Sarzecki and Mr. Freeman, who, again, I mentioned
18
    had filed his own individual disclosure statements not
19
    referring to the MGC Corporation, in page 531 of
20
    Mr. Starzecki's testimony, he told you very directly about the
21
    conversation with Mr. Freeman. There's a couple of facts
22
    there that I think were relevant to some of the discussion by
23
    counsel.
24
              The question was: Prior to writing the check, did
25
    you speak to someone?
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Summation - rebuttal - Capozzolo 2362 Yes, I did. 1 Answer: 2 Question: Who did you speak to? 3 I spoke to Michael Freeman. Answer: 4 And to the best of your recollection, can you please 5 tell the jury what was the content of that conversation? 6 The content of that conversation was that since I'm 7 already paying to Mr. Dunn's company, I would like to pay some 8 money as part of an agreed amount to the different company so 9 it's not going to be suspicious that one company gets that 10 much money. 11 Question: When you say "suspicious," why are you 12 explaining that it would be suspicious to pay one company 13 money that you were discussing here, the \$450,000? 14 Answer: It would be really hard to justify the work which was not done with that type of the amount of money. 15 16 Question: So to pay 334 Marcus Garvey the entire 17 amount of the kickback would have been suspicious in your 18 mind? 19 Answer: Yes, sir. 20 Question: Did you have to explain to Mr. Freeman 21 why you were paying Mr. Dunn this large sum of money? 22 No. 23 Question: Did he ask you why you were paying 24 Mr. Dunn 450,000? 25 Answer: No, sir.

Summation - rebuttal - Capozzolo

In that conversation now, once you had that part of the conversation, what more about the conversation about how you wanted to make the payment if there was anything?

Answer: Yes, sir. I asked Mr. Freeman if I can pay rest of the money to the law firm.

And would that be for purpose of doing what?

Answer: The purpose of doing that would be, again, disguise the payment as a legitimate transaction.

Question: And what type of legitimate transaction did you tell Michael Freeman you wanted to disguise it as?

As a legal fees.

That obviously is important for a number of reasons.

Mr. Freeman has a conversation with Mr. Starzecki and he's told he's going to be giving him money as part of the deal with Mr. Dunn. That tells you a number of things.

When Mr. Freeman doesn't say why are you giving me a bunch of money, Mr. Freeman clearly now knows that he is getting money they're not earning and it indicates that he had a full understanding of what Mr. Dunn's explanation to Mr. Starzecki was because when he has this conversation with Mr. Freeman, he doesn't have to give him the details. He doesn't have to tell him the amount of the kickback. He doesn't have to tell him why it's being paid. And why on earth would Mr. Starzecki have to instruct Mr. Freeman that he needs it covered as legal fees if they're not performing any

Summation - rebuttal - Capozzolo

legal work? It demonstrates that Mr. Freeman had the intent, the knowledge and the understanding of what the agreement was and why he is a part of the conspiracy.

And then when Mr. Hymowitz constructs the very same retainer agreement, it tells you clearly for legal services not performed that they're all part of the same conspiracy. There's much discussion. There's no evidence connecting Mr. Freeman to this conspiracy. That conversation specifically cuts to the, cuts to that point.

One of the arguments that was made by counsel was why should you believe Mr. Starzecki about the invoices and -- I'm sorry. Why would you believe Mr. Starzecki about the fact that he was upset that he hadn't, that he thought that it would be too much money to Marcus Garvey Corporation.

Mr. Starzecki explained that. It wasn't just the amount of money that he was paying to the corporation. It was money that he was paying to a corporation that wasn't doing any work on the particular jobsite.

In those other developers where they paid larger sums of money, Mr. Starzecki told you that a lot of those, those companies did work, like Jantar and Ursis, the money that he was generating the cash from, he said those companies did work. Wolocz's company did work on his contracts. Marcus Garvey Corporation did no work at the jobsite.

Secondly, those companies gave Bogdan Starzecki

Summation - rebuttal - Capozzolo

invoices. Marcus Garvey Corporation, Marcus Garvey
Corporation didn't give Bogdan Starzecki any invoices at the
point Mr. Freeman is having this conversation with
Mr. Starzecki. Mr. Starzecki wants some paper to cover some
of the money that he's paying in the kickbacks.

So when the lawyers tell you, oh, this is totally inconsistent because the kickback, at this point, he's only paying about \$300,000 and he's paid all these other companies so much more money, the difference is that those corporations, unlike Marcus Garvey Corporation, had actually done work at the jobsites on the projects where he's getting the kickbacks. That's the difference.

Now, one of the things just really quickly about the retainer agreement, I'm going to spend very little time on this because I don't think it's of a big moment, but there was this, Mr. Sercarz made this big dramatic moment about, oh, the thing with the fax line on the top. I'm going to show one thing really quick.

So the last page of the retainer agreement has a portion of the fax line on the top. The only thing I want to point out to you just so that this doesn't become more than it really was during the case, but just to give you an idea of what Mr. Starzecki was clearly implying is if you compare the MCR Restoration fax line to the Hymowitz & Freeman retainer agreement, you see, for example, that there's, this section

Summation - rebuttal - Capozzolo 2366 here does not match Mr. Starzecki's fax line. However, if you 1 2 compare it to the Hymowitz & Freeman, the other thing you'll 3 is notice that the fax by the Hymowitz & Freeman document, if 4 you look at the whole document, you can tell it's a little bit 5 reduced because it's a fax copy he received. You see the 6 margins on both sides are about two inches. 7 If you compare the Hymowitz & Freeman fax line to 8 it, you can see that it lines up. The 7/26 date matches these 9 three sets of dashes. 7/24/06 would match the date here. 10 Then you see there's a stamp for the time which would match 11 that. Then you see there's a provision for the phone number. 12 That matches that. Then there's a provision for Hymowitz & 13 That matches right there on the middle of the page. 14 And then over here, there's a page and a number, and you see 15 there's two sets of dashes there. 16 I don't want to spend a lot of time on it because 17 this is not CSI. I just want to point out that Bogdan 18 Starzecki had a rational basis to say when I look at it, it 19 reminds me of why this was from Hymowitz & Freeman. 20 (Continued on next page.) 21 22 23 24 25

Rebuttal Summation - Capozzolo

MR. CAPOZZOLO: All of this isn't really very much because why? Because it had to get to him, right? This was -- Mr. Hymowitz even admitted that this was in fact his fax that he got from the Hymowitz firm. So the under -- the statement by defense counsel really doesn't make a lot of sense and it really doesn't indicate in any way that Bogdan Starzecki said anything other than the truth which was corroborated by all the other witnesses and evidence in this case.

Just very quickly. Over the course of this investigation and the evidence you have been shown during the course of this trial, with regard to Mr. Hymowitz and Mr. Freeman, with regard to the Bed-Stuy project, the evidence has demonstrated that these men were in a conspiracy with Mr. Dunn, with Mr. Bogdan Starzecki, to defraud HPD. They made an agreement to take money out of the project by letting Mr. Starzecki bid a little bit higher on the project price, a multimillion dollars contract, and added just a few percentage points to it, to line their pockets.

The best evidence of this is the fact that they really didn't work that hard to get the job done. They had been paid. They didn't do the work that a developer was supposed to do. They didn't carry through on their promise. Mr. Hymowitz is not very generous in carrying out this project and trying to get homes to those in the Bed-Stuy area that

wanted this project completed.

MR. SERCARZ: Objection.

THE COURT: Yes. Counsel --

MR. CAPOZZOLO: I'll move on. I'll move on.

The fact is that the project didn't get done by them. It didn't get finished by them but they got their money out of the project and for all, for example, the complaining that Mr. Dunn did about the personal guarantees and how he was laying his reputation -- all his life's possessions on the line to get this, not one of them lost a dollar on these projects. There is no evidence of that. Personal guarantee meant nothing because these buildings secured those personal guarantees. Any money that got put into the project, the architects had to certify that the construction work had been done. So there was no chance that any of them were going to lose any money.

The evidence overwhelmingly shows that Mr. Starzecki paid these kickbacks to these men. The checks demonstrate it. Mr. Dunn said something like, why would he accept checks for a kickback? Mr. Starzecki explained. That's how business is done. They do it because they want the tax write-off. They take these things. They pretend like they are legitimate services so they can write them off. They paid them. They paid them by check. The same way Bogdan Starzecki had done it in all those other projects when he walked into the government

GR OCR CM CRR CSR

Rebuttal Summation - Capozzolo 2369 and told them the story of all the corruption he was aware of. 1 2 In addition to that, the --3 THE COURT: Counsel, I am going to give you one more 4 minute. 5 MR. CAPOZZOLO: Thank you. I understand. 6 All right. 7 THE COURT: That is it. It is beyond the time. 8 MR. CAPOZZOLO: I understand. 9 I apologize. I appreciate the fact that you have 10 hung on as long as you have. It has been a long day. 11 So simply going to say that the evidence 12 demonstrated that they were in a conspiracy. There was an 13 agreement. The agreement as demonstrated, and you will hear 14 from the judge, not just by the direct evidence of 15 Mr. Starzecki, the circumstantial evidence, the documents, the 16 recordings, all the things that demonstrate that Mr. Starzecki 17 was telling the truth when he walked into the FBI all those 18 years ago and began to tell all the information he did about 19 all the corruption he unveiled and then the government began 20 the investigation, all of which you have seen over the last 21 three weeks, which is corroborated. 22 With that I will leave you to consider the charges. 23 The judge will instruct you next week. 24 I thank you for the careful attention you have paid 25 to this very important case. Thank you.

THE COURT: All right. Thank you.

Members of the jury, I just want to thank you very, very much for holding out for this very long day. It was very helpful for us to move the case along, to have all the summations completed in a single day.

I am going to just ask again that you return now on Monday morning. I am correct on the day, not like last night when I referred to the weekend. We now are on your long weekend. Remember not to discuss the case. Even though you have heard the evidence and you have heard the summations, you are not to discuss this case among yourselves until I give you my instructions on the law on Monday morning.

Of course, you are not to discuss with anybody at any time the case and not to listen to anybody. Please avoid any media or newspaper, TV, et cetera, as I have been instructing you.

Finally, just remember that on Monday we will provide you with lunch and you won't be going out for lunch. So if you have any arrangements, phone calls that you have to make and all that, make them before you start at 10:00 o'clock.

Okay. Thanks again. And go to work tomorrow.

(The following occurred in the absence of the jury.)

MR. EVANS: Good night. Thank you.

THE COURT:

Good night, counsel.

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2371
1
              MR. DiCHIARA: The final charge? Are you going to
2
    email us the final charge?
3
              THE COURT: Do you need it for any reason? We have
4
    had our charge conference.
              MR. DiCHIARA: No. If it is going to be exactly
5
    what we have except --
6
7
              THE COURT: It is going to be esthetically more
8
    complete.
9
              MR. DiCHIARA: If it is just esthetically better,
    then I don't need it.
10
11
              THE COURT: Okay. We possibly can send it tomorrow.
12
    I am not sure. Okay?
13
              MR. DiCHIARA: Thank you.
14
              MR. SERCARZ: Thank you, Your Honor.
15
               (Recess until Monday, March 31, 2014, at 10:00
16
    o'clock am.)
17
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GR OCR CM CRR CSR

I N D E X **WITNESS PAGE** SUMMATION BY MS. POSA SUMMATION BY MR. DiCHIARA SUMMATION BY MR. SERCARZ SUMMATION (Continuing) BY MR. SERCARZ REBUTTAL SUMMATION BY MR. CAPOZZOLO

\$	•	2.5 [1] - 2178:14
T		20 [17] - 2191:6, 2221:15, 2224:6,
#4.05 0470.0	107 cm 0000ct 0	2252:22, 2279:22, 2296:19, 2296:20,
\$1.35 [1] - 2179:6	'97 [2] - 2306:10	2298:5, 2315:15, 2315:16, 2330:7,
\$10,000 [11] - 2179:11, 2187:19,	'99 [1] - 2306:10	2331:13, 2335:8, 2335:12, 2335:14,
2188:14, 2189:3, 2219:23, 2220:2,	_	2335:15, 2335:16
2220:10, 2220:12, 2220:16, 2232:7,	1	20,000 [3] - 2187:6
2278:6		20-year [2] - 2238:19, 2315:13
\$100,000 [27] - 2162:19, 2170:21,	4 0405:00 0405:00 0007:0	2000 [2] - 2247:23, 2306:10
2179:9, 2180:3, 2180:6, 2180:13,	1 [6] - 2165:22, 2165:23, 2227:2,	2002 [1] - 2261:13
2180:19, 2210:4, 2210:9, 2216:10,	2249:9, 2309:9, 2330:23	2003 [1] - 2261:13
2216:12, 2219:21, 2252:20, 2254:3,	1.2 [1] - 2296:22	2005 [5] - 2176:4, 2217:15, 2217:21,
2264:10, 2266:23, 2270:1, 2273:11,	1.35 [1] - 2189:4	2218:10, 2248:1
2276:14, 2277:5, 2277:8, 2278:3,	10 [2] - 2224:4, 2224:6	2006 [7] - 2162:10, 2217:21, 2219:18,
2307:16, 2307:22, 2321:25, 2328:12,	100 [2] - 2197:25, 2209:24	
2356:11	100,000 [4] - 2210:19, 2254:11, 2276:6,	2258:7, 2258:10, 2307:12
\$120,000 [1] - 2349:17	2277:1	2007 [28] - 2162:16, 2205:5, 2209:23,
\$130,000 [1] - 2297:6	101B [2] - 2251:9, 2251:15	2215:11, 2216:9, 2216:19, 2216:20,
\$134,500 [1] - 2216:25	105 [2] - 2232:24	2217:3, 2218:4, 2218:10, 2218:16,
\$134,500,000 [1] - 2215:8	107 [1] - 2223:5	2218:20, 2219:19, 2254:1, 2258:7,
	108 [1] - 2223:5	2264:9, 2268:3, 2269:20, 2274:9,
\$140,000 [3] - 2328:5, 2339:2, 2339:4	109 [3] - 2223:5, 2223:12, 2251:9	2275:11, 2275:18, 2275:19, 2275:22,
\$148,000 [1] - 2254:12		2275:24, 2276:2, 2278:6, 2281:6,
\$150,000 [13] - 2162:17, 2185:13,	109C [1] - 2223:12	2307:11
2195:7, 2277:9, 2307:8, 2318:19,	10:00 [2] - 2370:20, 2371:15	2008 [1] - 2218:7
2318:24, 2319:13, 2320:20, 2327:11,	10th [2] - 2258:6, 2258:10	2009 [4] - 2225:17, 2238:18, 2247:23,
2337:7, 2337:13, 2338:11	11-CR-00683(NG [1] - 2159:3	2248:17
\$2,000 [2] - 2259:8, 2270:20	11201 [2] - 2159:15, 2159:24	2010 [13] - 2225:19, 2227:20, 2228:6,
\$2,500 [1] - 2259:7	1184 [1] - 2350:18	2228:7, 2230:5, 2230:6, 2238:14,
\$2,600 [1] - 2259:9	12 [1] - 2271:5	2239:4, 2243:6, 2244:8, 2244:12,
\$20 [4] - 2294:19, 2296:1, 2296:21,	1233 [1] - 2324:7	2246:14, 2249:4
2296:22	1234 [1] - 2243:16	2011 [3] - 2284:20, 2315:19, 2325:23
\$228,200 [1] - 2253:1	130 [2] - 2297:7, 2297:8	
\$23,000 [1] - 2355:4	134,5 [3] - 2210:23, 2212:19, 2322:1	2012 [1] - 2280:8
	135 [2] - 2297:22, 2297:23	2014 [2] - 2159:7, 2371:15
\$25,000 [2] - 2189:21, 2276:7	140 [2] - 2315:16, 2329:4	210 [1] - 2222:25
\$250,000 [1] - 2227:24		2161 [1] - 2372:5
\$30,000 [1] - 2307:11	148 [1] - 2277:9	22 [1] - 2306:4
\$300,000 [2] - 2252:24, 2365:8	15 [5] - 2183:16, 2262:13, 2330:7,	2201 [1] - 2372:7
\$34,500 [2] - 2273:10, 2275:16	2330:17, 2339:23	2236 [1] - 2372:9
\$350,000 [3] - 2168:5, 2168:9, 2262:18	15,000 [1] - 2187:6	225 [1] - 2159:24
\$40,000 [1] - 2191:6	15-minute [1] - 2180:18	2257 [1] - 2372:11
\$450,000 [16] - 2162:14, 2167:8,	150 [11] - 2172:8, 2172:12, 2172:17,	22nd [1] - 2258:7
2168:17, 2199:22, 2200:2, 2226:19,	2185:12, 2307:19, 2307:24, 2326:22,	23 [1] - 2276:15
2227:20, 2228:1, 2228:5, 2228:9,	2327:11, 2333:3, 2337:8	23,000 [2] - 2354:22, 2354:23
2252:19, 2277:10, 2318:12, 2326:21,	150,000 [5] - 2172:15, 2185:21, 2322:1,	2310 [1] - 2372:13
2336:19, 2362:13	2337:16, 2338:9	
\$49,000 [1] - 2162:10	16 [9] - 2240:12, 2243:5, 2244:7,	24,5 [1] - 2276:11
\$5,000 [9] - 2178:18, 2190:7, 2190:25,	2244:12, 2246:14, 2249:4, 2262:13,	25 [2] - 2252:24, 2279:22
2191:4, 2195:16, 2195:23, 2195:24,	2271:5, 2306:20	25,000 [1] - 2276:7
	163,457 [1] - 2307:22	25,5 [1] - 2276:11
2195:25, 2196:1		26 [1] - 2305:16
\$5.800,000 [1] - 2336:5	16633 [2] - 2276:9, 2276:12	263,457 [1] - 2307:19
\$50,000 [5] - 2170:23, 2254:2, 2276:11,	16th [2] - 2238:14, 2239:6	26th [2] - 2275:22, 2307:17
2303:13, 2359:5	18 [1] - 2331:14	27 [3] - 2159:7, 2345:9, 2345:12
\$500,000 [3] - 2192:24, 2192:25, 2193:5	18th [1] - 2171:17	271 [1] - 2159:14
\$577,000 [1] - 2171:23	1976 [1] - 2279:21	274,000 [1] - 2254:10
\$630,000 [2] - 2218:9, 2232:2	1987 [1] - 2306:4	28 [1] - 2329:6
\$7,000 [1] - 2359:11	19th [1] - 2171:16	28th [1] - 2211:14
\$80,000 [1] - 2258:13		
\$800,000 [2] - 2297:3, 2297:9	2	2:00 [1] - 2256:8
\$87,000 [1] - 2259:22	_	2nd [6] - 2162:16, 2203:7, 2254:1,
		2269:20, 2276:6, 2339:18
	2 _[6] - 2165:23, 2166:22, 2255:18,	
	2275:24, 2276:2	

3	538 [2] - 2189:17, 2190:2	abuse [1] - 2183:22
_	558 [1] - 2187:5	accept [7] - 2224:11, 2241:12, 2246:9,
• 0405.00 0405.04 0000.00	564 [1] - 2188:12	2263:11, 2321:16, 2358:2, 2368:19
3 [3] - 2165:23, 2165:24, 2330:22	5:00 [1] - 2348:19	accepted [1] - 2321:12
3-T [1] - 2205:6	5K [5] - 2224:12, 2230:7, 2232:21,	access [2] - 2280:15, 2290:24
30 [9] - 2191:6, 2206:12, 2206:15,	2249:9, 2316:11	accomodation [2] - 2266:17, 2266:19
2206:16, 2221:7, 2221:14, 2221:15,	5K1 [1] - 2316:16	accomplished [2] - 2287:22, 2358:4
2279:22, 2361:3	5th [1] - 2162:9	accordance [2] - 2274:23, 2354:9
300 [1] - 2172:15		according [6] - 2213:17, 2252:19,
30th [1] - 2171:23	6	2262:14, 2264:7, 2272:9, 2275:13
31 [1] - 2371:15		account [39] - 2163:10, 2163:18,
31st [5] - 2171:23, 2203:19, 2275:18,	6 [1] - 2166:1	2167:10, 2171:14, 2171:15, 2188:3,
2275:19, 2276:3	6-T [1] - 2215:4	2188:6, 2188:13, 2203:18, 2203:22,
32 [1] - 2276:13	600 [5] - 2218:24, 2251:18, 2253:12,	2215:9, 2215:15, 2215:16, 2215:20,
325 [1] - 2297:9		2215:23, 2216:1, 2216:19, 2217:1,
33 [1] - 2203:11	2263:15, 2270:7	2217:2, 2217:4, 2242:9, 2242:18,
33-year [1] - 2184:24	600and [1] - 2251:9	2250:3, 2252:23, 2253:1, 2264:18,
332,000 [1] - 2171:15	601 [1] - 2211:15	2267:21, 2268:1, 2268:6, 2268:10,
334 [11] - 2162:19, 2170:4, 2170:17,	616 [1] - 2173:1	2268:15, 2275:13, 2278:4, 2278:15,
2179:17, 2193:24, 2195:11, 2304:5,	639 [1] - 2259:4	2303:14, 2353:12
2307:23, 2356:4, 2357:12, 2362:16	65 [1] - 2297:8	accountable [1] - 2200:7
33rd [3] - 2206:12, 2206:15, 2206:16	6:00 [1] - 2295:11	accountant [13] - 2180:25, 2213:10,
34 [1] - 2276:13	-	2213:17, 2213:20, 2213:21, 2214:17,
34,5 [9] - 2209:24, 2210:5, 2210:19,	7	2215:2, 2323:23, 2325:5, 2326:1,
2211:1, 2211:5, 2216:10, 2216:13,		2347:2
2275:20	7 [1] - 2166:1	accounting [2] - 2216:9, 2264:17
34,500 [2] - 2254:11, 2277:2	7-T [1] - 2213:6	accounts [7] - 2169:10, 2188:10,
35 [3] - 2256:3, 2256:4, 2297:15	7/24/06 [1] - 2366:9	2203:18, 2203:23, 2215:22, 2268:2,
35,4 [1] - 2210:24	7/26 [1] - 2366:8	2320:10
3rd [1] - 2203:16	78 _[1] - 2307:13	accrued [2] - 2303:16, 2303:18
_		accuracy [1] - 2316:25
4	8	accurate [8] - 2166:20, 2288:23,
		2313:17, 2334:18, 2334:19, 2335:12,
4 _[1] - 2165:23		2335:13, 2360:21
4,500 [2] - 2204:11, 2234:7	8 _[1] - 2306:9	accusations [2] - 2313:3, 2334:10
4-Bar [1] - 2287:3	80 [1] - 2204:17	accusatory [1] - 2312:1
40 [1] - 2221:8	85 [1] - 2296:9	accuse [4] - 2322:5, 2330:24, 2331:20,
438 [1] - 2235:15		2331:21
45 [4] - 2204:8, 2204:13, 2234:8	9	accused [5] - 2282:11, 2298:25,
45-minute [1] - 2204:10		2330:21, 2341:1, 2344:5
450 [1] - 2307:20	9.8 [1] - 2222:25	accusing [1] - 2322:22
450,000 [2] - 2172:13, 2362:24	907 [1] - 2311:11	acknowledge [2] - 2244:3, 2259:15
48,000 [2] - 2319:8	908 [1] - 2311:11	acknowledged [2] - 2219:4, 2287:21
48,957 [1] - 2307:12	9:45 [1] - 2159:7	acknowledges [1] - 2266:8
,	0.40 [i] 2.100./	acknowledgment [1] - 2248:23
5	۸	acquaintance [1] - 2264:13
J	Α	act [9] - 2188:21, 2188:23, 2188:24,
		2224:19, 2264:12, 2287:10, 2301:17,
5 _[6] - 2165:23, 2166:22, 2168:11,	a.m [1] - 2159:7	2301:18, 2351:4
2168:17, 2284:20, 2306:9	abandoned [1] - 2241:25	Act [2] - 2164:14
5.4 [1] - 2335:17	abetted [1] - 2253:11	acted [1] - 2339:5
5.8 [3] - 2335:3, 2335:15, 2335:16	abides [1] - 2303:6	acting [2] - 2190:19, 2280:9
5.9 [2] - 2336:3, 2336:15	ability [1] - 2308:4	actions [1] - 2200:7
50 [4] - 2166:19, 2166:21, 2166:22,	able [8] - 2168:9, 2214:21, 2240:17,	active [3] - 2260:14, 2260:18, 2272:4
2307:13	2275:7, 2289:20, 2314:15, 2323:16,	actively [4] - 2261:8, 2262:9, 2274:9,
50,000 [9] - 2162:19, 2162:21, 2162:22,	2348:11	2281:17
2254:4, 2254:5, 2276:7	absence [2] - 2286:1, 2370:23	activities [9] - 2278:25, 2282:20,
50/50/50 [1] - 2254:3	absolutely [6] - 2184:4, 2194:2, 2196:3,	2283:4, 2283:5, 2283:6, 2315:6,
510 [1] - 2280:10	2199:8, 2201:13, 2344:4	2344:5, 2345:19, 2353:13
518 [2] - 2235:15, 2310:16	absurd [1] - 2195:17	activity [1] - 2242:16
531 [1] - 2361:19	abundance [1] - 2253:3	Acts [3] - 2165:14, 2165:17, 2165:23

alternated [1] - 2279:5 acts [6] - 2165:16, 2199:15, 2291:8, 2369:18 agree [4] - 2238:22, 2294:16, 2296:16, 2310:21, 2317:18, 2344:20 alternatives [1] - 2182:6 actual [3] - 2178:21, 2205:18, 2350:25 2300:6 altogether [1] - 2189:20 add [5] - 2177:18, 2249:22, 2292:10, **agreed** [4] - 2165:1, 2165:15, 2175:4, amazing [1] - 2340:18 2362:8 2313:9, 2315:16 **AMERICA** [1] - 2159:3 added [4] - 2168:5, 2276:11, 2293:6, agreement [90] - 2163:21, 2170:4, American [1] - 2288:9 2367:18 2171:6, 2171:9, 2173:21, 2174:3, amount [29] - 2163:13, 2168:10, adding [1] - 2254:2 2174:9, 2174:11, 2175:4, 2179:21, 2177:18, 2191:6, 2208:14, 2226:15, addition [3] - 2307:6, 2334:17, 2369:2 2189:6, 2230:10, 2230:11, 2240:18, 2252:18, 2253:1, 2254:9, 2264:10, 2240:21, 2240:23, 2246:12, 2248:12, additional [3] - 2168:24, 2238:20, 2273:17, 2277:9, 2281:2, 2305:9, 2248:15, 2249:7, 2249:8, 2249:15, 2258:3 2318:3, 2334:24, 2335:12, 2335:13, 2249:17, 2250:13, 2250:18, 2251:14, address [4] - 2295:4, 2349:3, 2349:6, 2335:19, 2335:21, 2335:22, 2335:24, 2353:14 2251:19, 2252:1, 2252:12, 2253:5, 2336:8, 2339:25, 2362:8, 2362:15, 2253:22, 2263:14, 2263:21, 2263:24, 2362:17, 2363:22, 2364:15 addressed [2] - 2284:14, 2349:5 2264:1, 2273:15, 2273:18, 2273:19, amounts [7] - 2216:10, 2216:13, adds [2] - 2307:23, 2330:8 2275:8, 2275:9, 2275:14, 2275:21, 2245:11, 2247:18, 2259:10, 2326:13, admission [1] - 2248:20 2276:2, 2276:18, 2281:6, 2281:12, 2336:7 admit [1] - 2167:4 2303:23, 2311:10, 2314:16, 2314:18, ample [1] - 2274:16 admits [2] - 2219:23, 2288:24 2315:17, 2316:3, 2316:5, 2316:15, analysis [2] - 2266:10, 2336:7 admitted [11] - 2173:16, 2178:4, 2316:23, 2317:17, 2318:10, 2319:16, analyst [1] - 2222:22 2178:16, 2179:22, 2196:1, 2198:12, 2320:21, 2321:20, 2328:12, 2330:19, analyze [2] - 2287:13, 2304:12 2198:13, 2240:13, 2287:21, 2314:4, 2331:12, 2331:13, 2332:14, 2338:14, 2367:3 analyzing [1] - 2246:4 2338:19, 2339:13, 2339:15, 2339:22, Adorno [1] - 2312:8 anarchy [1] - 2172:10 2340:5, 2340:7, 2340:12, 2340:14, adult [1] - 2248:20 ancillary [1] - 2270:4 2341:5, 2341:14, 2341:16, 2341:17, advance [1] - 2183:25 AND [1] - 2159:7 2342:22, 2342:23, 2358:11, 2364:2, angry [2] - 2198:13, 2280:6 advances [1] - 2283:12 2364:5, 2365:14, 2365:19, 2365:25, **Anne** [5] - 2184:11, 2184:19, 2192:17, advantages [1] - 2231:18 2367:16, 2369:13 advice [2] - 2235:16, 2342:11 2284:2, 2303:8 agreements [3] - 2179:21, 2296:18, advise [2] - 2309:14, 2359:19 annoyed [1] - 2333:14 2340:19 **Anonymous** [1] - 2344:3 **advisor** [1] - 2279:22 agrees [3] - 2317:1, 2327:23, 2327:24 advisory [1] - 2316:18 anonymous [1] - 2344:4 ahead [1] - 2230:19 affairs [1] - 2165:13 Answer [9] - 2281:1, 2281:4, 2362:1, aided [1] - 2253:10 affect [1] - 2253:15 2362:3, 2362:14, 2362:19, 2362:25, ain't [2] - 2186:10, 2260:14 2363:4. 2363:7 affected [2] - 2165:2, 2187:22 air [2] - 2163:22, 2269:19 answer [29] - 2169:7, 2177:22, 2177:25, affidavit [1] - 2357:4 al [1] - 2160:10 2211:3, 2211:4, 2243:9, 2243:12, affidavits [1] - 2356:7 AI [1] - 2160:16 2243:20, 2245:19, 2246:8, 2258:22, afford [1] - 2297:9 **Al-Shabazz** [1] - 2160:16 2259:1, 2284:15, 2284:16, 2294:4, affordable [2] - 2354:8, 2354:10 alert [1] - 2242:16 2295:10, 2295:11, 2302:7, 2305:1, afraid [4] - 2197:14, 2226:22, 2302:18, Alexander [1] - 2252:22 2346:22, 2347:11, 2347:12, 2347:17, 2302:23 algebra [1] - 2307:5 2347:23, 2348:1, 2348:11 afternoon [8] - 2205:13, 2211:20, alike [1] - 2280:1 **ANSWER** [4] - 2265:23, 2311:13, 2257:5, 2257:10, 2257:11, 2310:12, all-cash [1] - 2181:13 2311:16, 2311:20 2310:13, 2348:25 allegation [5] - 2268:13, 2269:22, answering [1] - 2233:2 **AFTERNOON** [1] - 2257:1 2297:11, 2297:24, 2339:9 answers [2] - 2205:19, 2348:5 agencies [1] - 2184:17 allegations [11] - 2263:12, 2268:24, **ANTHONY** [1] - 2159:15 agency [2] - 2164:18, 2175:20 2286:21, 2287:16, 2303:21, 2308:11, Anthony [22] - 2160:12, 2160:17, Agent [23] - 2159:22, 2160:13, 2181:10, 2319:22, 2334:6, 2353:23, 2354:1, 2172:22, 2197:13, 2197:17, 2197:20, 2196:14, 2198:18, 2215:1, 2231:13, 2197:25, 2198:4, 2198:8, 2198:9, 2243:9, 2243:23, 2257:25, 2258:23, allege [2] - 2293:24, 2303:21 2198:13, 2198:14, 2198:17, 2199:8, 2266:21, 2267:2, 2275:5, 2288:19, alleged [6] - 2244:24, 2245:14, 2257:22, 2301:25, 2302:1, 2351:8, 2351:9, 2305:16, 2312:3, 2324:1, 2324:7, 2259:22, 2298:14, 2308:8 2351:16, 2352:8, 2352:13 2326:15, 2348:13, 2348:16, 2353:22 allegedly [1] - 2258:9 anti [1] - 2278:23 agent [6] - 2213:10, 2240:1, 2240:9, alleging [1] - 2203:5 anti-bias [1] - 2278:23 2288:25, 2309:10, 2323:21 allocate [1] - 2307:20 anticipated [1] - 2234:7 agents [8] - 2233:25, 2238:15, 2240:10, allow [2] - 2255:7, 2316:18 2243:18, 2295:17, 2305:13, 2322:15, anyway [2] - 2272:4, 2340:5 allowed [2] - 2261:11, 2317:14 apace [1] - 2259:19 2324:21 almost [5] - 2162:10, 2165:17, 2278:6, apartment [1] - 2296:6 **Agents** [1] - 2323:22 2325:17, 2343:4 apartments [3] - 2296:2, 2350:7, agile [1] - 2290:22 alone [7] - 2166:1, 2189:3, 2191:13, ago [8] - 2208:6, 2212:6, 2265:22, 2225:14, 2229:18, 2230:2, 2298:3 apologize [7] - 2215:3, 2234:6, 2234:9, 2308:7, 2325:9, 2359:4, 2359:6,

2301:19, 2309:16, 2369:9 appeal [2] - 2317:16, 2331:17 appear [2] - 2346:14 appearances [1] - 2160:11 appeared [3] - 2259:13, 2259:15, 2271:7 appliance [1] - 2187:9 application [5] - 2261:11, 2297:2, 2297:3, 2350:2, 2355:7 **applies** [2] - 2260:25, 2271:12 apply [5] - 2260:16, 2260:20, 2297:6, 2316:20, 2349:6 **applying** [2] - 2262:7, 2316:18 appreciate [5] - 2166:6, 2209:13, 2234:9, 2236:2, 2369:9 approach [2] - 2183:10, 2360:2 approached [2] - 2269:6, 2294:6 approaches [1] - 2319:11 appropriate [2] - 2213:21, 2221:2 approval [1] - 2279:25 approximation [1] - 2256:1 April [11] - 2162:9, 2225:18, 2227:20, 2228:6, 2230:5, 2239:4, 2258:6, 2258:10, 2268:3, 2274:9, 2307:12 **Apuzzo** [2] - 2159:22, 2160:13 architect [6] - 2222:20, 2224:1, 2224:2, 2336:4, 2336:10, 2336:16 architect's [1] - 2336:6 architects [3] - 2274:11, 2336:8, area [4] - 2300:17, 2327:3, 2353:14, 2367:25 areas [2] - 2262:2 argue [4] - 2212:15, 2233:18, 2234:5, 2313:23 argued [2] - 2201:14, 2203:20 arguendo [1] - 2290:16 argues [2] - 2222:19, 2233:20 arguing [1] - 2203:6 argument [21] - 2201:7, 2201:19, 2201:22, 2203:24, 2203:25, 2204:14, 2212:12, 2217:19, 2223:3, 2226:2, 2229:13, 2231:6, 2231:7, 2233:21, 2313:16, 2334:16, 2334:17, 2337:23, 2353:20 arguments [11] - 2183:18, 2201:12, 2234:4, 2310:24, 2311:4, 2312:19, 2327:19, 2330:10, 2330:11, 2364:10 arisen [1] - 2269:14 arm [2] - 2343:23

arm's [1] - 2260:8

armed [1] - 2245:3

Armstrong [83] - 2166:2, 2166:3,

2172:17, 2172:22, 2186:22, 2186:24,

2187:2, 2187:10, 2187:13, 2189:12,

2189:17, 2192:25, 2193:5, 2193:6,

2197:17, 2197:25, 2198:4, 2198:8,

2198:22, 2199:6, 2199:11, 2218:2,

2222:9, 2222:15, 2225:8, 2226:1,

2194:19, 2196:22, 2197:13, 2197:14,

2198:13, 2198:14, 2198:17, 2198:20,

2226:3, 2289:8, 2289:24, 2293:14, 2301:25, 2302:1, 2302:2, 2302:4, 2302:5, 2302:6, 2302:7, 2302:8, 2302:9, 2302:11, 2302:12, 2302:13, 2302:18, 2303:3, 2326:18, 2326:19, 2327:1, 2327:6, 2327:10, 2327:15, 2332:10, 2333:4, 2333:10, 2349:17, 2351:8, 2351:9, 2351:13, 2351:14, 2351:16, 2351:19, 2351:22, 2351:23, 2352:8, 2352:11, 2352:12, 2352:14, 2352:21, 2354:15, 2358:17, 2359:3, 2359:8, 2359:12, 2359:17 Armstrong's [5] - 2187:5, 2197:20, 2198:9, 2199:8, 2352:1 arrange [1] - 2295:5 arranged [1] - 2290:12 arrangement [1] - 2341:20 arrangements [2] - 2259:16, 2370:19 arrest [5] - 2178:6, 2186:16, 2198:18, 2234:14, 2247:23 arrested [13] - 2178:10, 2225:17. 2238:17, 2247:25, 2248:17, 2284:20, 2305:10, 2305:11, 2314:1, 2315:18, 2325:23, 2328:22, 2331:20 arrests [1] - 2243:18 arrows [1] - 2236:14 articulate [1] - 2284:3 aside [2] - 2282:21, 2305:2 asleep [1] - 2168:15 aspects [2] - 2271:2, 2317:25 assassinated [1] - 2286:17 assemble [1] - 2270:9 assess [1] - 2308:21 assessment [1] - 2316:24 asset [2] - 2295:22, 2295:23 assigned [2] - 2291:10, 2301:1 assistance [8] - 2240:24, 2241:9, 2249:13, 2249:23, 2250:5, 2250:22, 2316:13, 2316:22 assistant [2] - 2180:8, 2313:4 Assistant [2] - 2159:16, 2186:5 Assisted [1] - 2159:25 assisted [1] - 2252:13 associated [2] - 2165:4, 2165:8 association [2] - 2283:11, 2291:16 associations [2] - 2291:21, 2291:22 assume [2] - 2210:13, 2277:17 assumes [1] - 2216:12 assures [1] - 2361:11 astray [1] - 2287:7 ate [2] - 2181:6, 2347:24 attached [1] - 2223:10 attack [1] - 2183:19 attacking [1] - 2343:5 attacks [1] - 2343:5 attempt [4] - 2220:22, 2243:22, 2284:16, 2353:3 attention [6] - 2166:7, 2168:16, 2234:9, 2236:2, 2272:23, 2369:24 attentive [1] - 2235:9

2303:18 attorney [2] - 2175:16, 2251:11 Attorney's [4] - 2249:11, 2287:8, 2299:2, 2303:12 **Attorneys** [2] - 2215:20, 2291:10 attorneys [4] - 2330:3, 2334:21, 2336:17, 2353:15 attracted [1] - 2219:10 audit [6] - 2290:9, 2298:12, 2298:24, 2304:18, 2304:25, 2305:4 audited [2] - 2208:5, 2288:20 authorities [2] - 2249:14, 2316:14 authority [3] - 2192:9, 2260:3, 2300:12 available [2] - 2302:8, 2341:10 Avenue [8] - 2181:9, 2185:22, 2193:19, 2242:5, 2252:22, 2280:10, 2295:25, 2337:24 avoid [2] - 2248:22, 2370:14 awake [1] - 2264:25 aware [3] - 2179:13, 2253:12, 2369:1 В

B.C [3] - 2235:15, 2310:16 baby [1] - 2294:12 back-up [1] - 2182:3 backed [1] - 2338:4 backup [1] - 2306:24 bad [9] - 2242:23, 2291:19, 2330:23, 2335:4, 2335:10, 2335:11, 2335:14, 2351:3 bag [4] - 2293:19, 2293:20, 2302:17 balance [3] - 2239:8, 2250:6, 2276:21 balances [1] - 2264:11 ball [2] - 2173:18, 2174:17 banged [1] - 2225:1 bank [18] - 2171:14, 2171:15, 2188:6, 2188:7, 2193:3, 2196:12, 2198:22, 2237:21, 2258:1, 2270:12, 2295:18, 2323:2, 2323:3, 2354:15, 2355:2, 2355:13 banking [1] - 2238:24 bar [6] - 2183:12, 2190:1, 2233:10, 2309:6, 2310:4, 2360:7 bargain [1] - 2295:21 base [2] - 2297:11, 2303:4 baseball [1] - 2278:23 based [4] - 2166:15, 2231:8, 2274:13, 2282:14 basis [6] - 2169:3, 2178:24, 2264:18, 2266:12, 2337:4, 2366:18 basketball [2] - 2261:19, 2286:20 bathed [1] - 2270:9 bathes [1] - 2258:17 bathroom [1] - 2296:4 beat [1] - 2269:17 beautiful [2] - 2254:5, 2300:5 became [2] - 2269:17, 2350:24

become [5] - 2260:11, 2261:15,

2352:24, 2355:7, 2365:21

Attorney [4] - 2159:13, 2159:16, 2303:5,

becoming [1] - 2242:11 Bed [34] - 2163:9, 2166:11, 2167:18, 2168:12, 2169:12, 2169:14, 2175:13, 2175:21, 2176:5, 2176:8, 2176:16, 2176:18, 2185:17, 2190:15, 2199:25, 2212:19, 2212:21, 2215:22, 2219:1, 2219:15, 2219:16, 2260:7, 2261:1, 2265:10, 2265:14, 2343:18, 2346:9, 2349:12, 2349:22, 2350:15, 2351:6, 2355:8, 2367:13, 2367:25

bed [1] - 2287:21

Bed-Stuy [34] - 2163:9, 2166:11, 2167:18, 2168:12, 2169:12, 2169:14, 2175:13, 2175:21, 2176:5, 2176:8, 2176:16, 2176:18, 2185:17, 2190:15, 2199:25, 2212:19, 2212:21, 2215:22, 2219:1, 2219:15, 2219:16, 2260:7, 2261:1, 2265:10, 2265:14, 2343:18, 2346:9, 2349:12, 2349:22, 2350:15, 2351:6, 2355:8, 2367:13, 2367:25

Bed/Stuy [1] - 2240:11 **BEFORE** [1] - 2159:10 beg [2] - 2243:3, 2329:13

began [7] - 2239:4, 2241:15, 2246:1, 2259:18, 2260:15, 2369:18, 2369:19

begging [2] - 2277:12, 2330:2 begin [5] - 2161:17, 2244:19, 2263:16, 2279:17, 2318:2

beginning [5] - 2161:24, 2191:16, 2196:7, 2306:10, 2356:14

begins [6] - 2200:17, 2240:24, 2242:24, 2242:25, 2250:10, 2359:8

begun [1] - 2193:12

behalf [5] - 2257:23, 2284:4, 2288:5, 2289:3

behaved [1] - 2345:18 behind [1] - 2353:8 behold [1] - 2219:19 belabor [1] - 2246:2 belief [2] - 2291:7, 2291:9 believable [1] - 2228:2 believes [1] - 2215:11 below [2] - 2247:14, 2316:19

Ben [1] - 2300:15 bending [1] - 2253:11

benefit [3] - 2290:18, 2291:5, 2295:21

benign [1] - 2239:17 Benitez [1] - 2312:10 **berries** [1] - 2300:15

best [10] - 2184:18, 2194:22, 2196:9, 2221:17, 2225:21, 2238:22, 2260:16, 2308:4, 2362:4, 2367:20

bet [1] - 2297:2

better [12] - 2237:19, 2238:6, 2238:12, 2241:22, 2242:21, 2243:4, 2248:19, 2253:18, 2254:7, 2254:16, 2322:20, 2371:9

between [13] - 2223:1, 2231:4, 2231:8, 2259:16, 2265:20, 2296:19, 2296:20, 2309:10, 2336:20, 2344:21, 2351:21, 2351:22, 2361:17

beware [1] - 2286:18

beyond [29] - 2164:10, 2171:1, 2186:19, 2187:15, 2191:10, 2199:15, 2204:1, 2204:5, 2217:10, 2224:14, 2225:3, 2228:16, 2229:14, 2235:6, 2238:3, 2244:21, 2244:25, 2245:6, 2245:12, 2254:21, 2255:3, 2255:6, 2273:9, 2278:11, 2282:19, 2285:9, 2291:11, 2369:7

bias [1] - 2278:23 Bibi [1] - 2248:14

bid [64] - 2166:10, 2166:11, 2166:15, 2166:23, 2167:11, 2167:16, 2167:21, 2168:11, 2168:18, 2184:16, 2192:10, 2192:15, 2192:22, 2202:2, 2209:6, 2223:22, 2223:23, 2229:7, 2230:19, 2230:20, 2231:1, 2272:15, 2272:16, 2273:25, 2283:20, 2294:7, 2294:10, 2294:14, 2294:16, 2294:19, 2294:21, 2298:2, 2298:8, 2298:10, 2298:14, 2298:15, 2300:5, 2300:9, 2300:10, 2306:25, 2312:23, 2313:9, 2313:11, 2334:24, 2334:25, 2335:1, 2335:13, 2335:16, 2335:22, 2335:24, 2336:3, 2336:7, 2336:9, 2336:11, 2336:12, 2336:14, 2336:15, 2341:24, 2342:3, 2342:9, 2342:12, 2367:17

bidder [2] - 2272:17, 2283:18 bidders [10] - 2167:19, 2294:6, 2294:21, 2295:15, 2298:17, 2305:20, 2313:7, 2313:11, 2342:5, 2342:6

bidding [2] - 2167:19, 2293:25 bids [12] - 2168:16, 2168:17, 2184:25, 2202:11, 2209:6, 2245:2, 2270:4, 2281:3, 2283:17, 2283:20, 2292:16, 2341:13

big [13] - 2169:4, 2169:8, 2202:20, 2210:6, 2215:17, 2219:21, 2252:9, 2289:15, 2296:20, 2300:17, 2318:7, 2365:15, 2365:16

biggest [3] - 2227:25, 2228:1, 2296:1 Bill [1] - 2347:18

bill [15] - 2169:25, 2201:15, 2202:23, 2208:6, 2211:18, 2211:21, 2274:6, 2275:10, 2325:9, 2342:18, 2342:19, 2342:20

billed [2] - 2212:1, 2342:16 billing [21] - 2180:18, 2208:21, 2209:11, 2211:23, 2212:6, 2212:9, 2213:5, 2266:6, 2266:13, 2266:14, 2266:16, 2266:25, 2267:3, 2267:7, 2267:9,

2267:17, 2270:22, 2273:17, 2274:2,

2274:6, 2323:18 billions [1] - 2220:15

bills [30] - 2168:9, 2180:15, 2181:19, 2184:22, 2202:20, 2202:22, 2202:24, 2208:19, 2208:20, 2208:22, 2213:25, 2266:9, 2267:21, 2323:20, 2323:24, 2324:10, 2324:17, 2325:5, 2325:19, 2326:3, 2326:7, 2326:11, 2326:12, 2326:14, 2341:21, 2342:15, 2347:2, 2347:4

binder [4] - 2325:7, 2325:12, 2325:18, 2326:2

binding [1] - 2316:25 binds [1] - 2317:22

bit [16] - 2162:24, 2169:8, 2170:7, 2170:8, 2178:20, 2184:12, 2187:13, 2191:15, 2196:6, 2197:18, 2260:12, 2271:10, 2349:1, 2361:16, 2366:4, 2367:17

black [2] - 2302:24, 2352:8 blackmail [1] - 2190:23 blame [1] - 2350:10

bless [1] - 2181:21

blessed [11] - 2284:25, 2285:3, 2285:4, 2285:5, 2285:6, 2347:5, 2347:7, 2347:8, 2347:11

blindfold [1] - 2314:20 **blot** [1] - 2233:18

blow [2] - 2323:21, 2325:2 blow-off [2] - 2323:21, 2325:2

blows [1] - 2330:20 Blues [1] - 2287:3

BMW [3] - 2190:13, 2190:15, 2332:12

board [2] - 2161:7, 2279:4

bob [1] - 2172:7

Bob [44] - 2179:25, 2186:1, 2205:15, 2205:20, 2205:24, 2206:6, 2206:9, 2206:11, 2206:13, 2206:20, 2206:24, 2208:13, 2209:12, 2211:16, 2211:21, 2213:11, 2213:12, 2213:13, 2213:14, 2214:4, 2214:8, 2214:9, 2214:14, 2214:24, 2216:7, 2216:11, 2216:12, 2216:16, 2289:19, 2290:2, 2295:2, 2296:15, 2296:18, 2298:4, 2298:8, 2298:9, 2303:7, 2303:22, 2304:2, 2305:22, 2327:9, 2341:12, 2342:19, 2342:23

Bobby [1] - 2205:16 bobby [1] - 2289:21

Bogdan [122] - 2162:7, 2169:15, 2170:6, 2170:13, 2170:17, 2170:22, 2173:12, 2173:13, 2177:3, 2180:5, 2180:19, 2186:17, 2189:18, 2195:3, 2195:6, 2196:18, 2196:24, 2208:24, 2209:1, 2209:2, 2213:15, 2217:15, 2217:23, 2218:4, 2222:8, 2224:11, 2224:17, 2224:20, 2225:7, 2226:6, 2231:22, 2232:16, 2238:14, 2246:1, 2269:6, 2269:23, 2272:7, 2280:22, 2288:5, 2311:9, 2311:23, 2312:10, 2312:22, 2312:25, 2313:7, 2318:10, 2318:20, 2318:23, 2319:3, 2319:6, 2319:25, 2320:20, 2320:24, 2321:15, 2322:4, 2323:7, 2324:3, 2324:5, 2326:17, 2326:18, 2326:20, 2327:2, 2327:6, 2327:12, 2327:14, 2327:22, 2328:4, 2328:21, 2328:23, 2329:2, 2329:9, 2330:4, 2331:8, 2331:11, 2332:4, 2332:15, 2332:21, 2333:3, 2333:5, 2333:6, 2333:7, 2333:8, 2334:3, 2334:4, 2334:9, 2334:25, 2336:1,

2336:9, 2336:24, 2337:5, 2337:14, 2338:1, 2338:9, 2338:20, 2338:21, 2338:25, 2339:5, 2339:9, 2341:3, 2341:16, 2341:24, 2342:3, 2342:18, 2348:14, 2348:18, 2353:3, 2353:6, 2353:11, 2353:12, 2353:17, 2353:23, 2354:13, 2358:4, 2358:9, 2358:16, 2358:22, 2364:25, 2365:2, 2366:17, 2367:6, 2367:15, 2368:24

Bogdan's [1] - 2333:1 **bogus** [2] - 2247:3, 2247:18

boils [1] - 2278:7

book [8] - 2181:11, 2292:24, 2323:24, 2324:22, 2324:25, 2325:1, 2347:1, 2356:24

books [2] - 2304:18, 2304:20

boom [1] - 2171:25 Borough [1] - 2252:25

borrowing [2] - 2262:15, 2262:25 boss [4] - 2290:7, 2298:22, 2299:7

bottom [2] - 2252:4, 2254:8

bought [4] - 2291:2, 2296:25, 2297:9, 2303:17

Boulevard [1] - 2307:23

bounced [3] - 2198:21, 2198:23, 2359:6

bound [1] - 2324:19 box [1] - 2293:8

boxes [2] - 2174:17, 2263:8

bragging [1] - 2313:4

break [10] - 2170:8, 2200:17, 2200:23, 2204:24, 2221:2, 2255:13, 2255:15, 2272:20, 2275:7, 2301:5

breakdown [4] - 2208:17, 2208:22, 2209:12, 2209:25

breaking [1] - 2326:13 breaks [1] - 2192:1

bribe [9] - 2178:16, 2195:18, 2196:2, 2220:7, 2241:10, 2272:8, 2295:14, 2328:14, 2333:17

bribed [14] - 2191:10, 2247:9, 2296:15, 2298:2, 2298:4, 2312:22, 2313:7, 2321:14, 2328:23, 2330:22, 2333:12, 2351:25, 2353:1, 2353:12

bribery [9] - 2188:19, 2188:21, 2188:22, 2188:23, 2189:5, 2189:15, 2189:24, 2190:18

bribes [14] - 2164:23, 2177:13, 2177:15, 2178:5, 2178:14, 2178:16, 2239:1, 2239:4, 2246:25, 2249:3, 2263:8, 2307:20, 2321:11, 2331:23

bribing [7] - 2246:24, 2313:4, 2331:21, 2332:25, 2333:11, 2352:3

brief [3] - 2164:9, 2345:10, 2360:18

briefly [2] - 2246:20

bright [5] - 2237:13, 2270:10, 2284:3, 2317:12, 2338:8

brightly [1] - 2310:17

bring [17] - 2161:1, 2183:2, 2215:3, 2280:17, 2291:22, 2295:16, 2296:3, 2296:7, 2298:8, 2300:11, 2300:20, 2300:22, 2300:24, 2303:19, 2305:20, 2314:12, 2343:11

bringing [2] - 2257:6, 2302:14 $\pmb{\text{brings}}\,{}_{[5]} - 2176{:}3,\, 2286{:}13,\, 2302{:}19,\\$ 2343:6, 2343:14

brochure [1] - 2192:20

broken [3] - 2298:18, 2298:19, 2336:20

Bronx [2] - 2174:19, 2295:9 Brooklyn [6] - 2159:5, 2159:15, 2159:24, 2274:16, 2291:3, 2293:14

brother [5] - 2302:3, 2302:19, 2303:2, 2351:17

brought [15] - 2163:15, 2204:9, 2248:1, 2272:22, 2273:1, 2273:8, 2279:20, 2280:7, 2282:5, 2288:6, 2288:7, 2290:19, 2297:15, 2301:25, 2353:6

Brynner [1] - 2310:15 buddies [1] - 2262:17 budget [1] - 2297:19 budgets [1] - 2279:4

buffer [4] - 2357:22, 2357:24, 2358:1,

2358:2

buffers [1] - 2176:3 builder [1] - 2303:22 builders [1] - 2274:11

building [7] - 2168:6, 2168:8, 2168:10, $2190{:}2,\,2261{:}14,\,2262{:}20,\,2262{:}25$

Building [1] - 2252:23

buildings [3] - 2295:24, 2303:17, 2368:12

bums [1] - 2290:18

bunch [2] - 2223:4, 2363:17

bundle [1] - 2286:21

burden [13] - 2163:4, 2170:25, 2182:5, 2191:18, 2201:11, 2224:23, 2224:25, 2225:1, 2262:8, 2266:7, 2266:8, 2301:23

Bureau [4] - 2287:20, 2295:17, 2305:14, 2310:20

burgeoning [1] - 2262:1

burn [1] - 2287:11

business [25] - 2165:5, 2165:8, 2180:10, 2181:13, 2206:25, 2207:1, 2217:22, 2232:22, 2248:24, 2249:2,

2266:11, 2275:23, 2279:11, 2288:20, 2296:16, 2300:13, 2345:5, 2345:17, 2345:19, 2352:19, 2355:17, 2356:4,

2356:20, 2357:3, 2368:20

businessman [5] - 2167:3, 2167:6, 2172:2, 2172:3, 2238:22

businessmen [1] - 2357:7

BUTLER [1] - 2159:23 **button** [1] - 2181:25

buy [3] - 2167:25, 2187:9, 2200:1

buyer [1] - 2297:1

buyers [2] - 2349:14, 2350:23

buying [1] - 2170:15

BY [13] - 2159:15, 2159:17, 2161:21, 2229:1, 2236:9, 2257:16, 2300:1, 2310:11, 2372:5, 2372:7, 2372:9, 2372:11, 2372:13

BY:GERALD [1] - 2159:20

BY:MAURICE [1] - 2159:19

bye [2] - 2211:12 **bye-bye** [1] - 2211:12

C

C.S.I [1] - 2164:3

Cadman [2] - 2159:14, 2159:24

cagey [1] - 2267:2 cahoots [1] - 2167:25 calculated [1] - 2238:21 calculation [1] - 2243:24 calculator [1] - 2177:18

calculus [1] - 2307:5 caliber [1] - 2248:11

Caliendo [1] - 2160:21 **CALIENDO** [1] - 2159:19 cameras [1] - 2190:22

cannot [3] - 2223:3, 2240:3, 2317:4

cap [1] - 2261:4

capability [1] - 2246:17 capable [4] - 2252:14, 2284:3, 2287:8,

2340:6

CAPOZZOLO [31] - 2159:15, 2233:12, 2300:19, 2301:7, 2309:12, 2309:23, 2309:25, 2310:2, 2310:11, 2310:12, 2310:14, 2315:1, 2315:25, 2316:2, 2334:1, 2344:17, 2346:2, 2348:20, 2348:23, 2349:2, 2355:1, 2359:3, 2359:18, 2360:9, 2360:12, 2361:15, 2367:1, 2368:4, 2369:5, 2369:8, 2372:13

Capozzolo [7] - 2160:12, 2173:3, 2193:10, 2309:21, 2310:9, 2361:11, 2361:14

car [5] - 2190:13, 2190:16, 2195:15, 2251:3, 2323:3

card [7] - 2175:22, 2176:4, 2176:20, 2196:10, 2270:17, 2270:18, 2355:3

cards [1] - 2270:13

care [6] - 2167:17, 2194:8, 2220:22, 2254:19, 2282:5, 2351:20

career [2] - 2201:9, 2251:10

careful [9] - 2196:7, 2264:2, 2267:2, 2284:12, 2322:20, 2329:25, 2340:11, 2369:24

carefully [8] - 2196:6, 2277:13, 2284:16, 2302:9, 2304:13, 2305:21, 2305:23, 2325:14

cares [1] - 2343:22 carries [1] - 2315:13 carry [2] - 2297:8, 2367:23 carrying [5] - 2238:19, 2238:20, 2293:18, 2293:19, 2367:24

case [118] - 2164:1, 2164:4, 2165:6, 2165:12, 2165:18, 2166:4, 2166:7, 2166:9, 2169:2, 2170:11, 2170:19, 2170:25, 2175:7, 2175:17, 2181:8, 2184:5, 2187:23, 2191:16, 2191:25, 2192:3, 2194:9, 2194:25, 2197:8,

2204:3, 2204:7, 2217:11, 2222:4, 2222:6, 2224:9, 2230:13, 2231:7, 2231:21, 2234:14, 2234:18, 2234:25, 2235:1, 2235:5, 2235:6, 2235:9, 2235:18, 2235:24, 2237:24, 2237:25, 2238:5, 2241:24, 2244:7, 2246:19, 2248:2, 2250:23, 2251:6, 2252:10, 2255:16, 2258:3, 2262:24, 2263:13, 2264:22, 2267:11, 2267:15, 2268:13, 2269:23, 2269:24, 2270:15, 2271:7, 2271:8, 2272:9, 2273:8, 2273:22, 2274:5, 2278:16, 2282:3, 2282:4, 2283:2, 2283:3, 2284:4, 2284:12, 2285:14, 2289:19, 2292:1, 2292:5, 2292:10, 2292:13, 2292:15, 2293:6, 2308:5, 2308:7, 2311:2, 2312:2, 2313:11, 2313:19, 2323:1, 2323:2, 2329:2, 2332:12, 2332:20, 2334:19, 2337:13, 2343:7, 2345:18, 2349:4, 2351:6, 2352:23, 2353:9, 2353:15, 2353:18, 2354:1, 2354:12, 2354:16, 2356:15, 2357:24, 2365:22, 2367:9, 2369:25, 2370:4, 2370:9, 2370:11, 2370:14 cases [9] - 2204:21, 2205:25, 2212:4, 2235:3, 2271:12, 2271:14, 2280:15, 2333:13, 2358:13 cash [13] - 2172:9, 2181:13, 2186:6, 2190:3, 2190:7, 2229:25, 2246:25, 2247:2, 2292:25, 2293:1, 2293:20, 2364:22 cashed [3] - 2227:2, 2295:15, 2295:16

catch [2] - 2289:3, 2323:4

category [1] - 2319:18

caught [15] - 2176:25, 2218:5, 2218:6, 2232:12, 2247:9, 2287:23, 2298:25, 2316:4, 2323:19, 2325:10, 2325:22, 2346:24, 2347:16, 2347:17, 2347:18

CAUSE [1] - 2159:10 caution [1] - 2246:6 cavities [1] - 2286:14 center [1] - 2353:18

certain [4] - 2208:19, 2214:17, 2287:6, 2290:20

certainly [6] - 2165:8, 2175:9, 2177:4, 2194:10, 2217:7, 2360:22

certificate [1] - 2344:7

certification [2] - 2251:16, 2251:17

certified [3] - 2175:18, 2179:1, 2247:8

certify [1] - 2368:14 Cesar [1] - 2286:17

cetera [3] - 2215:22, 2305:14, 2370:15

chagrined [1] - 2237:2 chair [2] - 2234:23, 2351:1 chalk [1] - 2261:25

challenge [1] - 2321:8

chance [8] - 2164:6, 2181:4, 2211:20, 2233:18, 2234:5, 2248:22, 2330:19, 2368:15

chances [1] - 2171:16

change [14] - 2168:22, 2209:21,

2242:10, 2286:13, 2297:19, 2304:15, 2305:21, 2324:20, 2340:5, 2340:17, 2356:6, 2356:7, 2356:8, 2357:5 changed [5] - 2242:1, 2266:16,

2289:15, 2340:14, 2356:8

character [30] - 2224:18, 2248:13, 2250:16, 2278:14, 2279:6, 2280:13, 2280:20, 2280:21, 2289:14, 2289:15, 2289:18, 2290:14, 2290:17, 2291:4, 2291:5, 2291:19, 2343:3, 2343:14, 2344:21, 2344:22, 2344:23, 2345:15, 2345:16, 2346:5, 2346:7, 2346:8, 2346:9, 2346:10, 2346:17

charcoal [1] - 2332:12

charge [16] - 2164:12, 2166:1, 2189:24, 2197:8, 2244:24, 2262:12, 2280:9, 2288:2, 2301:6, 2305:6, 2305:7, 2329:3, 2330:17, 2371:1, 2371:2, 2371:4

charged [19] - 2164:4, 2165:7, 2165:15, 2165:18, 2175:11, 2187:17, 2188:20, 2188:21, 2244:21, 2248:18, 2263:10, 2268:19, 2271:5, 2271:13, 2278:17, 2301:4, 2314:5, 2315:11

charges [7] - 2197:7, 2225:4, 2225:15, 2284:21, 2291:11, 2329:4, 2369:22

charitable [5] - 2278:25, 2279:17, 2344:18, 2344:20, 2344:24

charities [2] - 2219:24, 2220:15 charity [3] - 2220:10, 2220:11, 2232:7

Charlotte [1] - 2279:2

chart [7] - 2161:9, 2215:17, 2236:12, 2242:20, 2243:2, 2254:6, 2258:5

charts [2] - 2245:21, 2254:24

Chase [1] - 2176:4 chasing [1] - 2287:18 chasten [1] - 2247:24

chatter[1] - 2309:10 cheat [2] - 2227:4, 2227:5

cheated [2] - 2217:17, 2247:20 check [52] - 2162:9, 2170:21, 2171:18,

2179:10, 2179:23, 2193:1, 2198:21, 2198:23, 2202:16, 2208:6, 2208:13,

2208:14, 2208:15, 2210:7, 2210:8, 2210:9, 2227:4, 2228:11, 2229:25,

2259:9, 2266:23, 2270:19, 2273:10, 2273:11, 2275:16, 2275:17, 2275:19, 2276:2, 2276:5, 2276:9, 2276:12,

2276:14, 2278:6, 2292:25, 2293:3, 2295:15, 2295:16, 2298:13, 2302:10,

2303:13, 2307:11, 2307:12, 2307:15,

2307:16, 2328:9, 2346:20, 2346:21, 2355:2, 2359:6, 2361:24, 2368:24

checked [3] - 2211:6, 2222:21, 2323:10 checks [84] - 2162:7, 2162:17, 2162:21,

2163:1, 2163:9, 2163:16, 2163:17, 2171:12, 2171:25, 2175:13, 2179:16, 2187:3, 2187:6, 2202:14, 2202:17, 2203:8, 2203:11, 2227:2, 2237:21, 2237:25, 2238:2, 2240:10, 2246:25, 2250:1, 2250:9, 2252:22, 2252:25,

2258:8. 2258:13. 2258:18. 2258:24. 2258:25, 2259:3, 2259:4, 2259:7, 2259:10, 2259:20, 2267:23, 2267:25, 2268:4, 2268:5, 2268:21, 2268:23, 2270:13, 2272:21, 2273:2, 2273:3, 2273:7, 2273:10, 2275:18, 2276:7, 2276:8, 2276:10, 2276:16, 2276:21, 2276:23, 2276:24, 2277:4, 2277:16, 2292:22, 2307:17, 2319:24, 2320:3, 2320:12, 2320:13, 2322:1, 2322:2,

2337:1, 2337:15, 2354:19, 2354:21,

2253:3, 2254:1, 2254:11, 2258:3,

2355:20, 2355:21, 2368:18, 2368:19 cheesecake [1] - 2293:22 child [2] - 2347:19, 2347:21

child's [1] - 2347:18 childlike [1] - 2347:15

choice [1] - 2360:18

choose [2] - 2192:22, 2283:20

choosing [1] - 2283:17

 $\textbf{chose} \ {\tiny [4]} \ -2194:25,\ 2223:15,\ 2262:16,$ 2354:16

chunk [1] - 2168:22 **church** [1] - 2266:17 cigar [1] - 2263:7

circumstance [1] - 2263:12

circumstances [11] - 2175:7, 2224:14, 2234:15, 2234:16, 2241:15, 2246:13, 2248:15, 2249:24, 2250:16, 2282:19

circumstantial [1] - 2369:15

citation [1] - 2279:14 citizen [1] - 2287:9 citizens [1] - 2272:10

City [20] - 2164:20, 2171:7, 2172:4, 2174:10, 2186:5, 2199:17, 2199:19, 2199:21, 2272:10, 2297:5, 2297:12, 2297:23, 2300:6, 2300:8, 2300:9, 2314:13, 2343:18, 2346:8, 2354:11, 2357:8

city [5] - 2178:7, 2184:22, 2288:25, 2291:1, 2291:3

civil [5] - 2196:16, 2196:17, 2248:1, 2269:10, 2290:9

claim [5] - 2169:3, 2178:25, 2229:15, 2337:5, 2339:16

claimed [2] - 2192:9, 2338:15

claiming [3] - 2190:23, 2339:5, 2355:21 claims [4] - 2229:18, 2252:17, 2252:20,

clause [1] - 2303:6 clean [2] - 2251:4, 2287:4

cleaned [1] - 2288:5

2330:21

clear [10] - 2163:3, 2206:5, 2219:7, 2250:17, 2274:8, 2287:4, 2287:15, 2292:13, 2346:16, 2351:11

clear-eyed [1] - 2287:15

clearly [6] - 2163:14, 2260:8, 2349:10, 2363:17, 2364:5, 2365:23

clerical [1] - 2276:24

CLERK [7] - 2221:5, 2221:25, 2255:19, 2285:20, 2286:6, 2360:5, 2361:13

companies [7] - 2323:11, 2356:3,

8

click [1] - 2214:9 client [17] - 2180:17, 2184:1, 2253:19, 2254:22, 2261:8, 2271:1, 2278:9, 2279:23, 2281:24, 2282:11, 2284:19, 2285:10, 2290:13, 2298:2, 2326:6, 2326:8, 2340:13 clients [7] - 2180:16, 2181:15, 2261:23, 2262:12, 2263:2, 2300:3, 2323:14 cloaked [1] - 2278:9 cloaks [1] - 2244:17 close [8] - 2205:1, 2234:9, 2291:15, 2327:12, 2329:19, 2329:20, 2329:21, 2332:7 closed [3] - 2193:2, 2193:5, 2303:14 closer[1] - 2215:3 closest [1] - 2312:10 closing [9] - 2193:8, 2193:12, 2219:15, 2219:16, 2272:18, 2307:3, 2309:16, 2317:8, 2349:12 closings [5] - 2219:14, 2312:18, 2330:3, 2349:14, 2351:11 clue [1] - 2275:7 cluster [4] - 2166:3, 2252:22, 2252:24, 2296:1 clusters [2] - 2303:24, 2303:25 **co** [3] - 2165:15, 2210:22, 2229:22 co-conspirator [2] - 2165:15, 2229:22 co-conspirators [1] - 2210:22 coach [1] - 2278:23 coffee [1] - 2174:16 coffers [1] - 2258:11 coincidence [7] - 2170:17, 2171:4, 2220:15, 2289:13, 2289:19, 2300:25 cold [1] - 2286:16 collect [1] - 2295:25 collected [7] - 2237:20, 2237:21, 2237:22, 2242:20, 2258:24, 2300:3 **collectively** [1] - 2259:3 college [2] - 2194:18, 2290:25 colloquy [1] - 2297:16 colluding [1] - 2293:24 color[1] - 2228:14 comfortable [1] - 2328:16 coming [5] - 2170:12, 2187:21, 2201:21, 2247:4, 2258:11 comment [1] - 2352:7 comments [2] - 2349:3, 2349:7 commerce [2] - 2165:2, 2187:22 commercial [2] - 2303:16, 2303:17 commissioner [2] - 2180:8, 2313:4 Commissioner [2] - 2184:20, 2186:6 commit [5] - 2171:9, 2290:15, 2290:17, 2291:8, 2343:10 commitments [2] - 2186:2, 2350:22 committed [2] - 2165:14, 2165:16 committee [1] - 2278:23 committing [1] - 2176:1 common [3] - 2202:21, 2267:10, 2292:21 community [1] - 2344:11

Community [1] - 2185:2

2357:2, 2364:21, 2364:22, 2364:25, 2365:8 Company [1] - 2354:20 company [37] - 2162:18, 2169:16, 2175:15, 2175:23, 2175:25, 2177:23, 2187:5, 2193:18, 2195:7, 2195:9, 2203:12, 2210:6, 2216:14, 2226:22, 2226:23, 2248:4, 2252:21, 2280:2, 2304:24, 2306:5, 2306:19, 2326:9, 2346:20, 2355:4, 2355:7, 2355:9, 2355:16, 2355:22, 2355:25, 2357:5, 2358:8, 2362:7, 2362:8, 2362:9, 2362:12, 2364:23 compare [3] - 2365:23, 2366:2, 2366:7 compete [1] - 2167:14 competing [1] - 2278:19 **competitive** [1] - 2272:16 complain [4] - 2288:3, 2296:5, 2317:21, 2321:12 complained [1] - 2198:20 complaining [5] - 2186:1, 2206:25, 2207:2, 2368:7 complains [1] - 2302:21 complaint [1] - 2303:11 complaints [2] - 2218:15, 2231:24 complete [3] - 2296:9, 2335:21, 2371:8 completed [3] - 2335:13, 2368:1, 2370:5 completely [1] - 2320:25 **completeness** [1] - 2316:25 complexity [1] - 2323:9 complicated [3] - 2167:1, 2177:24, 2243:1 complicit [1] - 2253:21 complied [3] - 2249:14, 2316:14, 2316:23 comply [1] - 2249:17 compromised [2] - 2247:19, 2292:7 computer [17] - 2181:19, 2181:22, 2181:23, 2181:25, 2211:5, 2236:15, 2304:19, 2325:16, 2325:22, 2325:24, 2326:14, 2347:2, 2347:10, 2347:14, 2347:24, 2347:25 Computer [1] - 2159:25 Computer-Assisted [1] - 2159:25 computerized [2] - 2210:8, 2210:13 computers [2] - 2298:13, 2348:3 conceal [2] - 2268:4, 2273:20 concerning [2] - 2250:1, 2272:11 concession [1] - 2338:24 concise [1] - 2360:18 concluded [1] - 2316:9 **concluding** [1] - 2256:5 conclusion [1] - 2303:20 conclusions [1] - 2304:14 concocted [1] - 2193:15 conduct [5] - 2165:12, 2283:12, 2301:12, 2356:3 conducted [3] - 2278:20, 2353:24, 2354:2

conducting [1] - 2353:25 conference [1] - 2371:4 confessed [4] - 2186:16, 2191:2, 2198:12, 2316:6 confession [2] - 2186:23, 2198:19 confirm [3] - 2337:12, 2337:17, 2337:18 confirmed [1] - 2357:5 conflict [7] - 2262:5, 2262:23, 2263:5, 2272:12, 2338:18, 2342:12, 2342:14 conflicted [1] - 2270:5 conform [1] - 2247:13 confrontations [1] - 2354:17 confronted [11] - 2163:8, 2163:23, 2194:13, 2246:14, 2250:19, 2257:24, 2311:24, 2312:13, 2312:15, 2320:3, 2326:5 confuse [1] - 2287:2 confused [1] - 2193:25 confusing [1] - 2185:19 congregation [1] - 2343:23 Congress [6] - 2279:14, 2301:5, 2344:7, 2344:8, 2344:17, 2344:19 connect [1] - 2292:11 connected [1] - 2202:17 connecting [1] - 2364:7 connection [9] - 2242:4, 2260:25, 2265:19, 2272:20, 2273:2, 2274:12, 2283:22, 2302:24, 2316:20 connections [2] - 2198:14, 2198:15 consensual [1] - 2220:18 conserving [1] - 2184:18 consider [16] - 2177:4, 2243:9, 2248:1, 2248:16, 2263:19, 2263:20, 2264:6, 2275:1, 2275:5, 2276:4, 2277:6, 2316:19, 2317:2, 2332:21, 2354:17, 2369:22 considerately [1] - 2284:16 considered [1] - 2226:5 consistent [15] - 2197:25, 2199:8, 2225:24, 2326:23, 2327:20, 2328:20, 2331:25, 2332:1, 2333:2, 2334:20, 2339:6, 2348:6, 2352:9, 2358:12 consistently [2] - 2225:11, 2247:21 conspiracy [21] - 2164:12, 2165:11, 2165:22, 2171:5, 2171:8, 2244:1, 2244:24, 2245:3, 2258:14, 2259:21, 2261:9, 2262:10, 2281:16, 2283:7, 2283:13, 2290:12, 2364:3, 2364:6, 2364:8, 2367:14, 2369:12 conspirator [2] - 2165:15, 2229:22 conspiratorial [1] - 2186:8 conspirators [2] - 2210:22, 2259:22 conspire [1] - 2165:12 conspiring [2] - 2293:25, 2319:17 Constitution [1] - 2271:12 constructed [2] - 2196:6, 2264:3 construction [9] - 2162:12, 2194:5, 2194:20, 2222:22, 2223:16, 2239:17, 2342:25, 2350:5, 2368:14 Construction [1] - 2253:1 constructs [1] - 2364:4

construing [1] - 2313:20 consults [1] - 2248:21 contact [1] - 2279:16 contacts [1] - 2180:12 contained [1] - 2245:9 content [4] - 2226:7, 2247:17, 2362:5, 2362:6 contests [1] - 2218:3

context [1] - 2264:6 continue [4] - 2162:24, 2183:20, 2257:13, 2278:4

continued [6] - 2228:20, 2250:24, 2259:19, 2285:23, 2333:19, 2366:20

Continued [9] - 2182:8, 2207:3, 2239:21, 2256:10, 2271:17, 2299:9, 2314:22, 2345:20, 2354:25

continues [3] - 2248:3, 2277:16, 2277:19

Continuing [7] - 2208:1, 2251:1, 2257:15, 2272:1, 2315:1, 2355:1, 2372:10

continuing [4] - 2183:1, 2229:1, 2300:1, 2334:1

CONTINUING [1] - 2346:1 contract [41] - 2162:12, 2162:13, 2166:12, 2167:16, 2168:6, 2169:11, 2169:17, 2170:14, 2170:15, 2193:21, 2194:13, 2194:20, 2217:25, 2218:1, 2230:18, 2250:14, 2270:7, 2274:1, 2274:23, 2275:11, 2303:6, 2305:20, 2306:11, 2313:14, 2317:21, 2317:22, 2317:23, 2328:10, 2331:9, 2335:2, 2335:6, 2339:2, 2341:4, 2341:11, 2342:11, 2342:12, 2342:17, 2367:18

Contracting [2] - 2294:7, 2294:10 contracting [1] - 2184:15 contractor [20] - 2169:15, 2171:24, 2194:6, 2196:25, 2197:3, 2231:2,

2233:6, 2233:7, 2264:21, 2268:17, 2269:15, 2272:13, 2305:3, 2306:13, 2306:14, 2314:3, 2350:3, 2350:4,

2356:17

contractors [16] - 2169:21, 2179:2, 2192:22, 2230:20, 2230:21, 2231:12, 2239:11, 2268:16, 2283:17, 2298:2, 2298:3, 2298:4, 2312:23, 2312:25, 2342:16

contracts [13] - 2167:20, 2184:16, 2185:6, 2194:4, 2194:14, 2196:9, 2292:16, 2292:19, 2306:8, 2317:24, 2339:1, 2350:4, 2364:23

contradicted [1] - 2272:24

contradictory [2] - 2273:19, 2315:20

contradicts [1] - 2185:23 contrary [1] - 2354:11 contravene [1] - 2280:17 contribution [1] - 2328:6 contrived [2] - 2228:15, 2253:20 control [4] - 2164:8, 2199:8, 2224:7, 2282:19

controlled [3] - 2193:21, 2290:12,

2306:23

conversation [55] - 2174:23, 2175:1, 2175:2, 2196:20, 2206:5, 2213:9, 2213:23, 2213:24, 2214:12, 2214:25, 2226:7, 2226:8, 2226:9, 2226:10, 2228:8, 2228:9, 2228:10, 2230:3, 2230:12, 2233:23, 2234:3, 2243:22, 2244:5, 2244:6, 2259:24, 2259:25, 2260:1, 2265:20, 2266:2, 2266:3, 2269:7, 2269:24, 2281:9, 2318:22, 2322:12, 2339:8, 2348:12, 2348:16, 2351:8, 2352:10, 2352:11, 2352:18, 2352:19, 2352:20, 2361:21, 2362:5, 2362:6, 2363:1, 2363:2, 2363:13, 2363:20, 2364:8, 2365:3

conversations [8] - 2181:3, 2222:16, 2265:18, 2274:10, 2312:24, 2339:14, 2358:18, 2361:16

convict [5] - 2200:6, 2205:9, 2205:10, 2224:22, 2227:15

convicted [1] - 2232:23

conviction [2] - 2178:6, 2291:15

convince [5] - 2250:5, 2254:21, 2255:5, 2278:10, 2301:11

convinced [3] - 2260:1, 2294:15, 2294:21

convincing [1] - 2224:18 convoluted [1] - 2193:15

cookie [5] - 2347:19, 2347:20, 2347:21

cool [1] - 2164:2

Cooper [1] - 2252:24

cooperate [2] - 2249:19, 2331:16 cooperated [5] - 2249:13, 2249:20, 2315:2, 2316:13, 2316:22

cooperates [1] - 2227:14

cooperating [7] - 2199:7, 2214:10, 2232:13, 2250:14, 2252:11, 2351:13, 2359:8

cooperation [18] - 2178:11, 2230:10, 2230:11, 2240:23, 2246:12, 2248:12, 2249:8, 2251:14, 2252:12, 2313:25, 2316:17, 2316:25, 2317:9, 2317:18, 2322:25, 2329:2, 2330:19, 2332:14

cooperator [4] - 2214:6, 2214:12, 2225:13, 2326:19

cooperators [3] - 2222:8, 2246:5, 2353:19

cops [1] - 2186:14

copy [8] - 2240:17, 2240:18, 2240:20, 2249:7, 2251:8, 2251:18, 2325:15, 2366:5

core [1] - 2304:3

2365:2, 2365:10

corner [4] - 2237:14, 2285:13, 2310:18, 2352:4

corners [1] - 2292:17 Corp [2] - 2169:15, 2304:5 Corporation [16] - 2185:3, 2187:4, 2195:11, 2318:16, 2320:1, 2320:4, 2337:20, 2356:5, 2356:12, 2358:1, 2361:19, 2364:14, 2364:24, 2365:1, corporation [11] - 2169:14, 2242:12, 2280:10, 2280:11, 2283:5, 2304:6, 2304:9, 2337:20, 2356:23, 2364:16, 2364:17

corporations [2] - 2304:8, 2365:9 correct [12] - 2176:11, 2176:21, 2184:6, 2222:23, 2271:11, 2303:1, 2307:19, 2311:12, 2311:13, 2322:4, 2332:17, 2370:7

corroborate [4] - 2244:7, 2255:9, 2348:13, 2353:23

corroborated [10] - 2321:10, 2325:20, 2333:9, 2337:22, 2351:10, 2353:11, 2353:12, 2367:8, 2369:21

corroborates [7] - 2268:23, 2318:21, 2319:2, 2351:16, 2351:18, 2352:13, 2358:22

corroborating [1] - 2190:16 corroboration [1] - 2257:20

Corrupt [1] - 2164:13

corrupt [16] - 2164:15, 2164:25, 2190:20, 2190:21, 2287:24, 2310:21, 2314:11, 2315:5, 2315:6, 2315:7, 2330:6, 2351:19, 2351:24, 2352:1, 2352:24, 2353:13

corrupted [3] - 2164:19, 2186:4, 2199:17

corrupting [2] - 2165:21, 2288:25 corruption [4] - 2353:8, 2354:6, 2369:1, 2369:19

corruptly [2] - 2188:24, 2190:19 Cosby [1] - 2347:18

cost [7] - 2184:16, 2245:9, 2297:14, 2297:25, 2300:6, 2300:9, 2342:1

costing [1] - 2272:9 costs [1] - 2300:8

Council [2] - 2278:24, 2279:1 counsel [14] - 2200:21, 2284:2, 2315:24, 2317:7, 2339:7, 2343:8, 2345:4, 2359:19, 2361:23, 2364:10, 2367:5, 2368:3, 2369:3, 2370:24

Counsel [16] - 2161:24, 2174:4, 2221:18, 2300:20, 2301:8, 2301:14, 2309:2, 2310:25, 2312:19, 2348:19, 2349:4, 2349:5, 2349:8, 2360:1, 2361:4

Counsel's [1] - 2311:23 Counsels [1] - 2314:17

Count [5] - 2164:22, 2165:22, 2187:15, 2197:9

count [8] - 2165:7, 2165:22, 2186:21, 2188:20, 2191:12, 2191:13, 2278:21, 2311:6

counter [1] - 2184:4

counting [4] - 2255:1, 2255:2, 2331:8 country [3] - 2246:22, 2272:2, 2288:7 counts [8] - 2186:19, 2188:15, 2188:18, 2199:14, 2238:19, 2238:20, 2315:15 Counts [3] - 2164:5, 2165:23, 2166:1

County [5] - 2279:10, 2279:14, 2343:15, 2343:17, 2343:20

couple [10] - 2180:3, 2180:4, 2220:11, 2232:24, 2311:3, 2325:13, 2349:5, 2351:8, 2361:11, 2361:21

Couple [1] - 2259:12 courage [1] - 2285:14

course [13] - 2173:7, 2182:4, 2186:15, 2212:17, 2258:1, 2312:14, 2312:18, 2317:7, 2322:13, 2355:6, 2367:10, 2367:12, 2370:13

COURT [73] - 2159:1, 2160:4, 2160:8, 2161:1, 2161:6, 2161:12, 2161:15, 2183:11, 2184:6, 2200:10, 2200:13, 2200:15, 2200:18, 2200:24, 2201:1, 2221:3, 2221:7, 2221:13, 2221:16, 2221:18, 2221:21, 2221:23, 2222:2, 2233:13, 2236:6, 2236:18, 2255:14, 2255:21, 2255:24, 2256:3, 2257:5, 2257:10, 2257:13, 2285:16, 2285:21, 2286:2, 2286:8, 2300:20, 2301:8, 2301:14, 2309:1, 2309:5, 2309:7, 2309:13, 2309:20, 2309:24, 2310:1, 2310:3, 2310:7, 2315:23, 2316:1, 2344:14, 2348:19, 2348:21, 2348:24, 2359:2, 2359:19, 2360:3, 2360:8, 2360:11, 2360:16, 2361:2, 2361:4, 2361:8, 2361:10, 2368:3, 2369:3, 2369:7, 2370:1, 2370:24, 2371:3, 2371:7, 2371:11

Court [19] - 2159:23, 2160:5, 2163:5, 2164:6, 2164:16, 2165:3, 2175:7, 2175:20, 2177:3, 2198:2, 2198:25, 2234:13, 2235:20, 2254:18, 2255:7, 2278:14, 2283:9, 2311:17, 2311:19

court [19] - 2160:1, 2184:8, 2205:23, 2221:20, 2236:25, 2246:4, 2249:11, 2251:8, 2257:2, 2280:17, 2284:3, 2310:6, 2316:16, 2316:18, 2317:3, 2317:6, 2317:10, 2338:12, 2361:7

Court's [1] - 2164:7 courtesy [1] - 2236:11 courthouse [1] - 2288:22 Courthouse [1] - 2159:5 courtroom [7] - 2160:2, 2234:1, 2244:11, 2257:3, 2317:12, 2327:17,

2338:5 **COURTROOM** [12] - 2160:3, 2160:5, 2160:9, 2160:15, 2160:19, 2160:22,

2160:25, 2161:10, 2161:14, 2257:4, 2257:8, 2257:12

cover [11] - 2163:20, 2173:11, 2324:15, 2341:6, 2341:15, 2343:1, 2358:10, 2358:11, 2358:15, 2359:4, 2365:4

covered [2] - 2240:24, 2363:25 **coveted** [2] - 2250:21, 2252:12

crafted [1] - 2325:14 craw [1] - 2271:10

crazy [3] - 2170:4, 2184:14, 2201:13 **create** [4] - 2278:16, 2291:4, 2291:5,

2324:14

created [4] - 2264:19, 2301:4, 2356:22

creates [2] - 2181:18, 2181:19

credibility [7] - 2178:2, 2230:13, 2230:16, 2233:24, 2270:14, 2313:20, 2334:7

credible [11] - 2177:6, 2189:23, 2244:21, 2292:1, 2302:2, 2313:22, 2333:8, 2334:5, 2334:6

credit [4] - 2167:5, 2274:14, 2279:8, 2344:6

crime [19] - 2164:9, 2174:12, 2199:4, 2223:21, 2223:24, 2223:25, 2225:3, 2226:20, 2229:4, 2248:5, 2271:8, 2271:14, 2278:17, 2283:10, 2283:12, 2295:21, 2304:19, 2330:24

crimes [18] - 2164:7, 2164:11, 2165:18, 2165:20, 2171:9, 2175:11, 2176:1, 2187:17, 2232:20, 2244:20, 2282:11, 2308:8, 2316:6, 2321:4, 2321:5, 2322:22, 2323:8, 2343:10

CRIMINAL [1] - 2159:10

criminal [15] - 2160:9, 2174:7, 2174:21, 2196:17, 2232:23, 2242:14, 2242:16, 2243:13, 2251:10, 2270:15, 2271:7, 2271:9, 2278:18, 2290:8

criminally [3] - 2187:18, 2188:1, 2188:17

 $\pmb{\text{criminals}}\, {\tiny [3]} - 2174{:}13,\, 2174{:}19$

CRISTINA [1] - 2159:16

Cristina [1] - 2160:12 critical [4] - 2212:10, 2235:25, 2259:25, 2273:7

criticism [6] - 2320:25, 2321:15, 2322:4, 2332:1, 2346:12

criticized [1] - 2324:2 criticizes [1] - 2343:11 crook [1] - 2291:17

crooked [1] - 2291:18

crooks [3] - 2287:22, 2287:24, 2304:1 cross [20] - 2163:17, 2166:18, 2183:3, 2183:25, 2184:4, 2184:10, 2198:1, 2222:24, 2233:11, 2259:14, 2270:8, 2270:24, 2271:2, 2279:13, 2284:24, 2302:8, 2325:10, 2334:21, 2336:6,

cross-examination [16] - 2183:3, 2183:25, 2184:4, 2184:10, 2198:1, 2222:24, 2233:11, 2259:14, 2270:8, 2270:24, 2271:2, 2284:24, 2302:8, 2334:21, 2336:6, 2355:2

cross-examining [1] - 2279:13

crossing [1] - 2306:21 CRR [1] - 2159:23 CSI [1] - 2366:17 cups [1] - 2174:16 curious [1] - 2314:17

customary [2] - 2266:11, 2272:25

cut [2] - 2339:24, 2340:7 **cuts** [3] - 2171:18, 2364:9 **Cyberpol** [2] - 2226:24, 2248:4

D

D.C [1] - 2300:17

dad [1] - 2347:20

daddy [1] - 2347:21

dance [2] - 2233:2, 2311:21

danced [1] - 2311:9

dancing [3] - 2176:9, 2176:22, 2177:21

Daniel [1] - 2349:11

dark [8] - 2236:25, 2245:23, 2264:24, 2285:7, 2285:13, 2327:2, 2338:6, 2354:3

darkened [1] - 2237:14

darn [1] - 2189:10

dashes [2] - 2366:9, 2366:15

date [9] - 2162:10, 2162:16, 2202:25, 2208:14, 2228:13, 2275:25, 2276:6, 2366:8, 2366:9

dated [1] - 2275:24 daylights [1] - 2197:16

days [5] - 2170:20, 2213:6, 2227:1,

2232:24, 2269:11

dead [1] - 2281:20 deal [18] - 2165:24, 2185:15, 2187:2, 2189:14, 2189:21, 2202:20, 2266:2, 2275:3, 2275:4, 2290:23, 2308:18, 2316:8, 2317:19, 2317:20, 2318:7,

2360:19, 2363:14

dealing [5] - 2197:2, 2231:18, 2232:6,

2232:7, 2279:6 **dealings** [1] - 2279:11

deals [2] - 2232:9, 2296:23

dealt [1] - 2314:8 debate [1] - 2217:18

debt [8] - 2170:5, 2194:11, 2194:20, 2338:12, 2338:13, 2351:21, 2352:19, 2359:5

debts [2] - 2320:16, 2359:4 Decatur [1] - 2252:24

deceased [1] - 2168:2

deceit [1] - 2242:23

decide [8] - 2202:1, 2202:7, 2202:8, 2224:17, 2229:8, 2234:14, 2317:13, 2344:8

decided [4] - 2173:19, 2238:22, 2294:1, 2300:18

decides [4] - 2220:16, 2248:21,

2317:15, 2328:5 deciding [1] - 2248:25

decision [19] - 2164:24, 2204:23, 2230:24, 2235:1, 2235:2, 2235:9, 2235:10, 2243:6, 2243:7, 2244:4,

2248:24, 2249:25, 2253:15, 2279:12, 2279:24, 2287:15, 2288:2, 2313:22,

2319:1

decision-making [1] - 2164:24 decisions [7] - 2192:11, 2192:12, 2224:19, 2248:8, 2280:6, 2287:13, 2287:14

declared [1] - 2247:18

deduct [1] - 2173:15 deducted [1] - 2247:19 deeded [1] - 2280:5 deeper [1] - 2277:12 deeply [1] - 2220:13 defect [1] - 2259:20

defendant [16] - 2159:8, 2165:6, 2165:7, 2173:12, 2189:9, 2190:19, 2249:12, 2284:11, 2301:17, 2316:12, 2316:21, 2317:1, 2319:14, 2332:17, 2344:6, 2344:22

Defendant [3] - 2159:17, 2159:19, 2159:20

defendant's [3] - 2191:14, 2319:22, 2337:5

defendants [47] - 2162:8, 2162:12, 2162:18, 2162:22, 2164:4, 2164:10, 2165:25, 2166:13, 2168:10, 2169:5, 2169:11, 2170:1, 2170:20, 2171:20, 2172:24, 2174:25, 2175:5, 2179:12, 2179:24, 2182:3, 2187:18, 2187:20, 2191:21, 2192:1, 2192:2, 2199:14, 2199:16, 2200:6, 2231:17, 2235:8, 2257:23, 2260:11, 2271:13, 2293:7, 2293:8, 2310:22, 2312:2, 2318:11, 2318:15, 2318:18, 2319:15, 2320:6, 2321:6, 2336:13, 2349:7, 2353:8, 2357:24

defendants' [4] - 2168:25, 2171:6, 2320:25, 2327:19

defense [27] - 2166:17, 2174:7, 2174:21, 2184:5, 2184:11, 2194:25, 2201:4, 2201:16, 2249:12, 2251:10, 2286:25, 2304:15, 2317:7, 2318:9, 2321:4, 2321:12, 2322:3, 2328:4, 2330:2, 2330:10, 2330:11, 2334:21, 2336:16, 2339:7, 2354:15, 2360:19, 2367:5

defenses [1] - 2201:15 defined [1] - 2289:16 definitely [1] - 2174:10 definition [1] - 2164:24

defraud [9] - 2166:8, 2169:6, 2171:7, 2174:10, 2225:6, 2281:16, 2282:14, 2283:8, 2367:15

defrauded [2] - 2183:7, 2229:9 **degree** [2] - 2251:12, 2290:25

delay [1] - 2193:13 delayed [1] - 2349:13 deliberate [1] - 2332:24

deliberations [2] - 2244:19, 2263:16

delivery [1] - 2306:23 delta [1] - 2296:20 Delta [1] - 2287:3

demand [2] - 2257:23, 2264:22 **demanded** [4] - 2167:18, 2172:13,

2173:19, 2296:15 demanding [1] - 2172:22 demeanor [2] - 2177:4, 2346:14 demonstrable [1] - 2193:13

demonstrably [2] - 2192:23, 2195:13

demonstrate [8] - 2251:11, 2283:4, 2311:3, 2318:17, 2320:13, 2342:14, 2368:18, 2369:16

demonstrated [9] - 2246:10, 2330:4, 2330:20, 2352:23, 2353:10, 2354:5, 2367:14, 2369:12, 2369:13

demonstrates [7] - 2281:13, 2282:4, 2318:1, 2318:20, 2319:15, 2330:12, 2364:1

demonstrating [2] - 2355:15, 2355:16 demonstrative [2] - 2236:12, 2236:14

denied [1] - 2274:12

denominations [3] - 2227:3, 2229:24, 2259:7

deny [2] - 2195:4, 2274:20

denying [3] - 2163:10, 2313:3, 2356:2 Department [8] - 2164:20, 2166:14, 2175:18, 2179:1, 2199:17, 2297:13, 2304:8

dependant [1] - 2231:22

deposited [3] - 2216:18, 2217:3, 2250:2

Depot [1] - 2187:8

depriving [3] - 2353:4, 2354:7, 2354:8

depth [1] - 2280:19

DEPUTY [12] - 2160:3, 2160:5, 2160:9, 2160:15, 2160:19, 2160:22, 2160:25, 2161:10, 2161:14, 2257:4, 2257:8, 2257:12

Deputy [1] - 2184:20

derived [4] - 2187:18, 2188:1, 2188:17, 2268:22

derives [1] - 2270:5

describe [3] - 2239:4, 2312:15, 2327:1

described [1] - 2264:1

describes [2] - 2242:11, 2264:8

describing [1] - 2195:14 description [1] - 2197:21 deserted [1] - 2236:25

designed [1] - 2244:6

desire [3] - 2250:21, 2252:12, 2282:20

desires [1] - 2249:10

desk [3] - 2228:14, 2276:1, 2340:1

despite [1] - 2319:22 destroyed [1] - 2314:11

detail [9] - 2164:7, 2166:7, 2191:15, 2195:14, 2209:4, 2238:17, 2239:15, 2274:5, 2306:24

detailed [5] - 2180:17, 2181:14, 2266:13, 2311:8, 2359:24

details [4] - 2303:24, 2318:6, 2332:11, 2363:21

determination [3] - 2316:21, 2317:2, 2344:16

determine [8] - 2246:8, 2249:12, 2253:8, 2269:2, 2283:21, 2285:8, 2344:14, 2359:2

determines [1] - 2316:12 **determining** [1] - 2269:8 **developed** [1] - 2262:1

developer [25] - 2167:25, 2168:1, 2194:7, 2194:9, 2239:13, 2242:17,

2242:19, 2260:14, 2260:17, 2260:18, 2264:21, 2272:14, 2279:22, 2281:24, 2282:7, 2283:6, 2297:21, 2300:17, 2329:21, 2329:23, 2332:4, 2356:16, 2356:19, 2367:22

developer's [2] - 2296:8, 2350:13 developers [36] - 2169:21, 2178:10, 2178:15, 2192:11, 2192:14, 2192:21, 2239:11, 2239:19, 2241:13, 2242:9, 2245:2, 2245:16, 2247:3, 2260:4, 2260:11, 2260:23, 2272:4, 2282:2, 2282:9, 2282:22, 2289:20, 2300:2, 2306:17, 2310:22, 2312:9, 2315:7, 2323:8, 2332:5, 2332:6, 2334:10, 2334:11, 2349:18, 2349:21, 2349:24, 2357:15, 2364:19

development [10] - 2219:13, 2257:18, 2262:7, 2346:20, 2350:1, 2355:7, 2355:9, 2355:15, 2355:22, 2356:13

Development [11] - 2164:21, 2166:15, 2175:18, 2179:1, 2187:4, 2193:19, 2195:2, 2199:18, 2297:13, 2354:20,

devised [1] - 2270:25

2354:22

DiChiara [39] - 2160:23, 2160:24, 2161:5, 2191:17, 2200:12, 2200:14, 2200:17, 2200:22, 2200:25, 2201:2, 2208:1, 2221:7, 2221:10, 2221:14, 2221:17, 2222:1, 2222:3, 2229:1, 2229:2, 2233:15, 2238:15, 2240:13, 2246:1, 2253:2, 2269:9, 2284:10, 2311:7, 2315:22, 2324:2, 2357:21, 2358:25, 2360:2, 2360:13, 2360:21, 2371:1, 2371:5, 2371:9, 2371:13, 2372:7

DICHIARA[1] - 2159:20 **difference** [4] - 2253:23, 2344:21,

2365:9, 2365:12

different [20] - 2178:1, 2195:4, 2198:3, 2215:23, 2217:19, 2225:22, 2227:23, 2244:11, 2267:22, 2276:22, 2279:10, 2298:16, 2319:4, 2323:8, 2323:9, 2334:8, 2339:15, 2343:12, 2345:6, 2362:8

differential [1] - 2277:16

difficult [3] - 2215:2, 2235:10, 2286:16

dig [2] - 2211:7, 2277:12 **ding** [2] - 2289:20

direct [11] - 2163:17, 2175:14, 2184:1,

2198:1, 2253:24, 2259:17, 2260:15, 2306:2, 2306:9, 2306:12, 2369:14 directed [3] - 2319:2, 2324:4, 2352:21 directly [7] - 2185:23, 2260:5, 2269:22,

2281:10, 2283:24, 2339:10, 2361:20 **dirty** [4] - 2188:10, 2197:3, 2251:4,

2304:20

disapprovement [1] - 2311:1 disbursements [1] - 2264:11 disciplinary [1] - 2270:22 disclose [2] - 2238:25, 2357:12 disclosed [2] - 2239:16, 2239:18 disclosure [7] - 2272:18, 2356:1, 2356:9, 2356:18, 2357:11, 2361:18 discount [1] - 2249:1 discovery [1] - 2248:21 **discretion** [1] - 2260:3 discuss [6] - 2225:15, 2230:1, 2255:16, 2370:9, 2370:11, 2370:13 discussed [7] - 2170:10, 2219:12, 2259:8, 2280:24, 2281:2, 2281:5, 2321:25 discussing [3] - 2240:15, 2343:9, 2362:13 discussion [8] - 2318:4, 2318:5, 2323:5, 2325:4, 2339:11, 2340:10, 2361:22, 2364:7 2368:24 disguise [4] - 2265:11, 2281:14, 2363:8, 2363:10 disguised [1] - 2229:7 disjunctive [1] - 2249:16 dismissal [1] - 2218:8 disparage [1] - 2271:4 disposal [1] - 2193:4 disposition [2] - 2279:25, 2280:7 disprove [1] - 2353:23 dispute [2] - 2198:20, 2293:9 distracting [1] - 2309:10 distressed [1] - 2263:10 distributed [1] - 2245:16 **DISTRICT** [3] - 2159:1, 2159:1, 2159:11 District [4] - 2159:14, 2160:5, 2160:6, 2303:11 diverting [1] - 2273:3 divides [1] - 2318:25 division [1] - 2282:22 divvy [4] - 2318:18, 2320:8, 2320:9, 2320:19 **DNA**[1] - 2164:2 document [16] - 2253:20, 2264:3, 2264:5, 2264:19, 2264:24, 2265:2, 2265:14, 2273:20, 2275:6, 2275:23, 2282:9, 2292:17, 2325:6, 2366:3, 2366:4 documentary [2] - 2247:16, 2278:18 documentation [2] - 2350:20, 2350:22 documents [30] - 2166:4, 2239:8, 2239:10, 2240:1, 2240:3, 2241:1, 2242:25, 2247:8, 2249:18, 2250:8, 2250:10, 2250:20, 2253:17, 2257:25, 2265:11, 2270:9, 2270:11, 2285:7, 2297:20, 2303:20, 2311:24, 2312:13, 2312:15, 2323:10, 2336:1, 2353:25, 2355:10 2354:15, 2357:8, 2357:17, 2369:15 dog [2] - 2181:6, 2347:24 2341:11 dogs [1] - 2288:4 dollar [5] - 2162:11, 2168:17, 2219:9, 2298:5, 2368:10 dollars [22] - 2165:8, 2167:22, 2178:4, 2178:16, 2199:21, 2213:1, 2217:23, 2220:5, 2226:19, 2226:21, 2226:23, dress [1] - 2232:15

2226:24, 2232:10, 2253:3, 2272:8,

2287:18, 2295:24, 2298:11, 2335:1,

2342:2, 2353:4, 2367:18 donate [1] - 2220:17 donated [1] - 2220:12 donates [1] - 2220:10 donations [2] - 2219:23, 2220:2 done [42] - 2165:20, 2166:16, 2166:19, 2183:6, 2184:13, 2185:7, 2195:4, 2209:11, 2212:20, 2213:22, 2214:22, 2224:5, 2224:6, 2243:13, 2283:22, 2290:7, 2291:4, 2303:12, 2308:15, 2309:14, 2317:11, 2317:15, 2317:16, 2317:18, 2322:24, 2331:18, 2335:8, 2337:21, 2337:24, 2338:25, 2339:21, 2342:1, 2350:7, 2362:15, 2365:10, 2367:21, 2368:5, 2368:15, 2368:21, dontcha [1] - 2238:12 Dorian [1] - 2308:19 dots [1] - 2292:11 dotting [1] - 2306:21 double [1] - 2342:20 double-bill [1] - 2342:20 doubled [1] - 2303:1 doubled-down [1] - 2303:1 doubt [42] - 2164:10, 2171:1, 2171:2, 2186:20, 2187:16, 2189:1, 2189:2, 2191:11, 2191:20, 2199:15, 2203:4, 2203:5, 2204:1, 2204:5, 2216:5, 2217:10, 2224:15, 2225:4, 2227:10, 2228:17, 2229:14, 2235:7, 2238:3, 2244:22, 2244:25, 2245:7, 2245:12, 2254:22, 2255:6, 2273:10, 2273:22, 2278:11, 2278:16, 2285:9, 2291:12, 2320:24, 2322:5, 2327:20, 2330:4, 2330:13, 2338:1, 2339:6 down [44] - 2163:13, 2169:8, 2169:20, 2170:8, 2180:17, 2183:17, 2184:16, 2190:16, 2195:14, 2209:15, 2249:24, 2251:21, 2261:3, 2275:7, 2276:4, 2276:25, 2277:3, 2278:7, 2284:11, 2287:5, 2288:3, 2289:17, 2297:10, 2303:1, 2305:16, 2309:8, 2309:18, 2318:24, 2322:1, 2322:7, 2326:13, 2327:14, 2328:17, 2328:22, 2328:25, 2334:13, 2336:5, 2336:15, 2340:12, 2341:22, 2348:7, 2348:16, 2356:16 downpayment [1] - 2162:15 dozen [1] - 2227:23 dozens [1] - 2332:5 draft [9] - 2181:24, 2218:19, 2273:16, 2275:25, 2338:16, 2339:16, 2340:24, drafted [4] - 2218:18, 2218:19, 2338:15, drafting [1] - 2266:22 drafts [2] - 2216:8, 2340:24 dramatic [1] - 2365:16 draw [2] - 2293:21, 2359:23 drawn [1] - 2344:1

drive [2] - 2184:16, 2279:3 driving [4] - 2174:18, 2190:15, 2195:15, 2204:6 dropped [2] - 2173:18, 2275:25 drum [1] - 2269:17 due [3] - 2180:11, 2186:3, 2282:19 dumb [2] - 2293:2 **Dunn** [223] - 2159:18, 2160:10, 2160:15, 2160:17, 2162:13, 2162:18, 2162:22, 2163:24, 2165:6, 2165:14, 2165:19, 2166:1, 2167:17, 2168:20, 2170:5, 2170:23, 2172:7, 2172:13, 2172:16, 2173:10, 2173:17, 2173:18, 2175:2, 2176:3, 2178:18, 2179:16, 2179:18, 2185:4, 2185:9, 2185:21, 2185:25, 2186:2, 2186:4, 2186:5, 2187:9, 2188:11, 2189:12, 2189:13, 2189:17, 2189:25, 2190:6, 2190:9, 2190:10, 2190:13, 2190:16, 2191:2, 2191:5, 2191:7, 2191:10, 2191:13, 2192:4, 2192:19, 2192:24, 2193:6, 2193:14, 2193:15, 2193:21, 2194:9, 2194:12, 2194:24, 2195:4, 2195:13, 2196:20, 2197:15, 2197:16, 2198:7, 2198:11, 2198:17, 2198:19, 2199:1, 2199:15, 2226:11, 2227:21, 2228:5, 2228:8, 2228:9, 2229:3, 2229:11, 2229:12, 2230:17, 2230:22, 2230:25, 2234:11, 2234:15, 2240:7, 2241:17, 2249:8, 2254:2, 2254:12, 2257:23, 2259:14, 2259:16, 2259:17, 2261:22, 2277:8, 2277:18, 2282:1, 2284:5, 2287:18, 2289:4, 2289:6, 2289:10, 2289:24, 2291:8, 2292:5, 2292:20, 2292:22, 2293:13, 2293:16, 2293:24, 2295:8, 2295:14, 2295:21, 2298:11, 2301:3, 2301:11, 2302:9, 2302:11, 2302:22, 2303:11, 2303:15, 2303:22, 2303:24, 2304:2, 2304:17, 2305:9, 2307:8, 2307:11, 2308:8, 2308:19, 2308:20, 2310:22, 2312:21, 2313:1, 2313:8, 2313:12, 2315:18, 2318:11, 2318:22, 2319:1, 2319:6, 2319:8, 2319:10, 2319:14, 2320:2, 2320:5, 2320:12, 2320:17, 2320:22, 2322:11, 2326:20, 2327:7, 2327:8, 2327:16, 2328:9, 2331:20, 2331:24, 2332:8, 2332:11, 2332:25, 2333:7, 2333:10, 2333:12, 2333:17, 2334:4, 2334:11, 2336:20, 2336:21, 2336:22, 2337:3, 2337:6, 2337:17, 2337:19, 2338:2, 2338:5, 2338:10, 2349:4, 2349:5, 2351:1, 2351:7, 2351:15, 2351:22, 2351:25, 2352:2, 2352:6, 2352:10, 2352:12, 2352:15, 2352:16, 2352:21, 2352:25, 2354:16, 2356:1, 2357:2, 2357:13, 2357:17, 2357:25, 2358:3, 2358:5, 2358:17, 2358:18, 2358:19, 2358:21, 2359:5, 2359:9, 2359:11, 2359:14, 2362:21, 2362:24, 2363:15, 2367:15, 2368:8, 2368:19 dunn [1] - 2320:7

drill [1] - 2169:8

DUNN[1] - 2159:7 Dunn's [22] - 2184:19, 2186:16, 2186:23, 2192:17, 2193:9, 2193:17, 2194:22, 2194:23, 2196:4, 2199:11, 2251:3, 2295:2, 2302:16, 2304:18, 2307:13, 2337:12, 2337:13, 2337:23, 2349:7, 2350:9, 2362:7, 2363:19 during [11] - 2216:19, 2234:20, 2257:25, 2258:21, 2261:16, 2314:16, 2316:4, 2336:18, 2345:19, 2365:22, 2367:11

Ε

E-mail [1] - 2172:25 e-mail [3] - 2211:13, 2211:14, 2280:8 E-mails [1] - 2180:4 early [4] - 2175:17, 2181:3, 2219:19, 2276:2 earn [1] - 2262:10 earned [4] - 2216:15, 2216:19, 2217:3, 2227:10 earning [1] - 2363:18 earth [3] - 2252:9, 2286:13, 2363:24 earth-shattering [1] - 2252:9 easel [1] - 2201:2 easier [2] - 2305:19

easily [2] - 2321:22 East [5] - 2159:14, 2159:24, 2206:12,

2206:15, 2206:16 **EASTERN** [1] - 2159:1

easiest [2] - 2211:3, 2342:14

Eastern [2] - 2159:14, 2160:6 easy [3] - 2187:20, 2204:25, 2254:15

eating [1] - 2190:3 Ebony [1] - 2308:20

ECF [4] - 2205:22, 2237:22, 2270:12, 2280:14

economy [3] - 2206:21, 2208:2, 2274:18 Eddie [3] - 2312:11, 2329:19, 2329:22

edit [1] - 2340:15 editing [1] - 2340:15 Edward [1] - 2261:18

effect [1] - 2234:12

effort [4] - 2240:22, 2244:5, 2260:10, 2260:13

egg [1] - 2188:4

eight [3] - 2199:14, 2346:4

either [7] - 2230:9, 2276:13, 2294:3, 2303:9, 2357:14, 2358:20, 2359:15

elected [1] - 2280:10 electronic [1] - 2205:23

element [7] - 2165:3, 2168:25, 2190:18, 2225:3, 2235:25, 2244:20, 2282:12

elements [10] - 2164:6, 2164:9, 2165:10, 2168:24, 2187:20, 2188:23,

2197:10, 2225:4, 2282:12, 2291:11 Eleven [1] - 2197:9

eleven [2] - 2164:4, 2199:13 elicited [1] - 2184:1

Elmo [1] - 2249:9

ELMO [1] - 2254:25 email [1] - 2371:2 emails [1] - 2292:16 embodied [1] - 2270:7

emerge [6] - 2240:25, 2241:1, 2241:16, 2242:24, 2250:11

emerges [1] - 2241:1 Emma [1] - 2288:10 emotion [1] - 2287:10 emotional [1] - 2287:15 employ [1] - 2243:11

employed [2] - 2165:5, 2268:12

employee [1] - 2184:25 employees [1] - 2301:1 enabled [1] - 2279:15 encounter [1] - 2247:25

encounters [2] - 2198:8, 2290:13 end [16] - 2184:21, 2219:18, 2233:16, 2234:24, 2243:24, 2275:11, 2280:22, 2282:3, 2283:1, 2285:11, 2294:5, 2310:4, 2329:10, 2349:25, 2350:6,

ended [2] - 2169:18, 2246:1

ends [1] - 2318:8

2360:13

enforcement [5] - 2186:13, 2243:17, 2247:25, 2249:14, 2316:14

engaged [5] - 2279:17, 2281:16, 2283:11, 2345:10, 2353:1

engages [2] - 2218:16, 2345:17

engaging [1] - 2187:18 engine [1] - 2270:25 engineer [1] - 2222:21

English [5] - 2246:22, 2288:8, 2288:16, 2288:17

enhanced [1] - 2346:7 enormous [1] - 2272:10 enter [1] - 2251:4

entered [1] - 2162:11 **Enterprise** [1] - 2185:2

enterprise [18] - 2164:15, 2164:17, 2164:19, 2165:4, 2165:9, 2165:13, 2169:10, 2245:10, 2245:15, 2300:12, 2300:16, 2300:23, 2300:24, 2301:12,

2301:13, 2302:16, 2305:5, 2352:3 enters [6] - 2160:2, 2161:11, 2221:24,

2257:3, 2257:9, 2361:9 entire [5] - 2316:7, 2316:10, 2318:15, 2332:13, 2362:16

entirely [1] - 2359:22

entities [3] - 2169:7, 2356:20, 2357:16 entitled [2] - 2186:25, 2275:12

entity [4] - 2163:10, 2356:22, 2356:24, 2357:18

entrepreneurial [1] - 2192:20 entrepreneurs [2] - 2185:18, 2294:1

entries [2] - 2259:11 entry [1] - 2277:1

equivocating [1] - 2177:8 especially [2] - 2174:20, 2235:2 ESQ[8] - 2159:13, 2159:15, 2159:16,

2159:17, 2159:19, 2159:19, 2159:20,

2159:21

essence [1] - 2252:3 essential [1] - 2225:4 essentially [1] - 2328:5

establish [5] - 2244:23, 2245:5, 2245:6, 2245:13, 2281:15

established [3] - 2244:21, 2262:2, 2311:16

establishes [1] - 2285:9

estate [10] - 2167:25, 2168:1, 2180:12, 2219:6, 2219:13, 2266:2, 2275:3, 2275:4, 2279:22, 2290:23

esthetically [2] - 2371:7, 2371:9 estimating [2] - 2360:20, 2360:22 et [4] - 2160:10, 2215:22, 2305:14, 2370:15

evaded [1] - 2247:21 evading [1] - 2311:22

evaluate [4] - 2163:5, 2191:24, 2291:25, 2308:5

evaluating [1] - 2168:15

EVANS [16] - 2159:17, 2160:16, 2161:3, 2200:16, 2221:22, 2285:19, 2286:4, 2286:10, 2300:1, 2300:2, 2300:22, 2301:10, 2301:19, 2309:15, 2359:16, 2370:25

Evans [8] - 2160:16, 2160:17, 2200:11, $2234{:}16,\,2285{:}17,\,2285{:}18,\,2286{:}3,\\$ 2286:9

evasive [1] - 2288:15

evening [7] - 2254:13, 2258:20, 2259:23, 2295:11, 2319:19, 2319:20, 2361:12

evening-up [2] - 2258:20, 2259:23

evenly [1] - 2308:22

event [3] - 2197:23, 2215:19, 2260:20 events [7] - 2248:17, 2266:24, 2273:15, 2289:15, 2313:24, 2344:18, 2344:24 eventually [3] - 2168:3, 2197:6, 2261:15

evidence [120] - 2164:2, 2164:10,

2166:7, 2171:5, 2175:9, 2175:15, 2182:6, 2183:14, 2186:23, 2187:3, 2188:8, 2190:20, 2193:4, 2198:21, 2199:10, 2202:3, 2203:1, 2203:2, 2203:4, 2205:4, 2205:10, 2205:11, 2205:23, 2212:13, 2214:23, 2217:14, 2219:7, 2220:25, 2222:12, 2224:15, 2226:17, 2227:18, 2228:16, 2228:18, 2228:19, 2229:10, 2230:21, 2230:24, 2230:25, 2231:6, 2231:17, 2232:11, 2233:21, 2233:22, 2235:22, 2239:9,

2242:1, 2242:3, 2242:5, 2244:6, 2244:21, 2245:18, 2248:13, 2252:7, 2255:5, 2255:9, 2255:11, 2259:3, 2260:7, 2267:10, 2273:1, 2273:14,

2274:8, 2274:21, 2274:22, 2278:10, 2278:15, 2278:16, 2278:19, 2279:19,

2285:9, 2288:2, 2291:25, 2292:12, 2298:1, 2300:19, 2300:21, 2301:11, 2303:4, 2308:5, 2308:10, 2308:13,

2308:15, 2310:17, 2310:18, 2311:6,

2312:20, 2312:24, 2315:20, 2330:11, 2343:3, 2344:12, 2344:15, 2344:17, 2349:10, 2349:19, 2353:9, 2354:12, 2357:10, 2357:13, 2359:17, 2359:22, 2359:23, 2359:24, 2364:7, 2367:8, 2367:11, 2367:13, 2369:14, 2369:15, 2370:10

evidenced [1] - 2353:21 exacerbating [1] - 2277:16 exact [8] - 2163:13 2171:22 2

exact [8] - 2163:13, 2171:22, 2172:16, 2188:6, 2190:8, 2192:18, 2226:8, 2260:22

exactly [13] - 2164:3, 2167:12, 2168:20, 2171:10, 2173:5, 2180:7, 2209:7, 2262:12, 2327:17, 2333:5, 2348:17, 2351:17, 2371:5

exaggerated [2] - 2250:22, 2330:21

exaggerates [1] - 2251:14 **exaggerating** [1] - 2252:14

examination [23] - 2183:3, 2183:25, 2184:1, 2184:4, 2184:10, 2198:1, 2222:24, 2233:11, 2253:24, 2259:14, 2259:17, 2260:15, 2270:8, 2270:24, 2271:2, 2273:23, 2284:24, 2302:8, 2306:2, 2306:12, 2334:21, 2336:6, 2355:2

examine [2] - 2238:24, 2285:7 **examining** [1] - 2279:13

example [11] - 2223:12, 2311:7, 2312:21, 2318:2, 2320:16, 2321:18, 2322:14, 2327:21, 2354:18, 2365:25, 2368:7

examples [1] - 2188:9

excellent [2] - 2206:9, 2256:6

except [5] - 2196:10, 2266:19, 2297:25, 2301:17, 2371:6

exception [1] - 2292:6 excess [1] - 2179:5

exchange [2] - 2247:1, 2247:3 exchanging [1] - 2320:14

excuse [7] - 2181:7, 2205:12, 2226:14, 2227:21, 2230:18, 2322:6, 2360:16

excuses [2] - 2205:8, 2205:9

Executive [1] - 2279:15 exemption [1] - 2304:7 exerted [1] - 2251:13 exhibit [1] - 2218:23

Exhibit [16] - 2173:1, 2187:5, 2188:12, 2211:15, 2218:24, 222:25, 2240:2, 2249:8, 2251:3, 2251:9, 2251:15, 2251:18, 2253:12, 2259:4, 2263:15, 2270:7

Exhibits [4] - 2161:8, 2251:23, 2276:20, 2353:18

exhibits [4] - 2218:15, 2245:21, 2254:25, 2276:13

exigencies [1] - 2243:17

exist [4] - 2231:15, 2326:15, 2326:16 **existed** [7] - 2212:3, 2245:1, 2324:25, 2325:19, 2325:23, 2336:2, 2351:14 existence [2] - 2273:6, 2357:12 existing [2] - 2168:6, 2218:14 exists [3] - 2208:23, 2209:10, 2211:10

exits [3] - 2221:6, 2255:20, 2360:6 **expect** [6] - 2165:3, 2170:1, 2170:13, 2175:7, 2179:24, 2198:2

expected [1] - 2286:22 **expense** [1] - 2324:15

expenses [1] - 2247:18 **experience** [1] - 2290:21

experienced [4] - 2174:7, 2174:20,

2290:23, 2293:2

experiences [1] - 2304:11

expire [1] - 2350:22

explain [9] - 2181:18, 2234:16, 2241:2, 2254:11, 2259:21, 2288:1, 2342:22, 2342:23, 2362:20

explained [5] - 2195:25, 2198:19, 2303:18, 2364:15, 2368:20 **explaining** [2] - 2196:11, 2362:12

explanation [10] - 2180:2, 2268:21, 2277:2, 2288:1, 2324:24, 2326:10, 2342:25, 2343:1, 2343:2, 2363:19

explanations [1] - 2267:6 explicitly [1] - 2185:25 explosive [1] - 2322:12 expose [1] - 2219:6 expressed [1] - 2311:1

extent [1] - 2316:17 extorted [1] - 2247:5

extortion [5] - 2191:13, 2197:8, 2197:10, 2199:11, 2301:18

extortionate [1] - 2352:20 extra [2] - 2179:11, 2293:1

extract [1] - 2244:6 extracting [1] - 2265:25 eye [1] - 2325:12

eyed [1] - 2325:12 eyed [1] - 2287:15

eyes [3] - 2191:23, 2228:14, 2252:16

F

fabricates [1] - 2251:14 fabricating [1] - 2253:7 fabulous [1] - 2296:24

face [8] - 2185:5, 2193:9, 2224:25, 2235:7, 2258:18, 2270:19, 2354:3,

facetious [1] - 2228:15 facilities [1] - 2361:1

2354:12

facing [4] - 2232:24, 2248:19, 2250:18, 2253:5

fact [60] - 2167:5, 2168:16, 2175:12, 2176:8, 2176:10, 2176:16, 2198:11, 2198:22, 2217:17, 2217:19, 2217:25, 2218:3, 2218:9, 2218:17, 2219:4, 2219:21, 2220:5, 2222:14, 2226:4, 2226:19, 2229:15, 2232:16, 2233:3, 2234:22, 2242:3, 2258:24, 2261:16, 2263:6, 2264:15, 2267:7, 2268:5,

2268:22, 2274:4, 2277:4, 2281:5, 2281:13, 2282:2, 2282:17, 2288:12, 2294:23, 2302:23, 2303:15, 2312:4, 2318:7, 2319:13, 2321:11, 2324:10, 2324:12, 2326:5, 2327:21, 2351:9, 2351:16, 2352:7, 2353:11, 2364:12, 2367:3, 2367:20, 2368:5, 2369:9 facts [11] - 2175:6, 2324:75, 2324

facts [11] - 21/5:6, 21/5:9, 221/:5, 2217:8, 2222:24, 2231:8, 2231:9, 2251:6, 2270:3, 2317:2, 2361:21

failed [6] - 2183:3, 2220:25, 2231:15, 2235:24, 2281:15, 2301:23

failure [4] - 2174:5, 2227:16, 2288:23, 2299:8

fair [8] - 2167:13, 2232:3, 2233:9, 2250:15, 2279:6, 2285:14, 2322:4, 2342:9

fairly [1] - 2308:5

faith [2] - 2316:21, 2316:24

fake [1] - 2289:21 fall [1] - 2347:13

false [10] - 2192:23, 2195:13, 2203:24, 2222:19, 2238:20, 2245:9, 2248:18, 2250:23, 2312:1, 2355:19

falsehoods [1] - 2192:6 falsely [1] - 2321:7

fame [1] - 2261:19

family [8] - 2199:7, 2199:12, 2200:1, 2300:16, 2329:20, 2351:16, 2352:22

famous [1] - 2235:12 fancy [1] - 2164:16

far [7] - 2216:22, 2237:15, 2256:4, 2261:20, 2264:23, 2270:2, 2270:11

fast [1] - 2286:25 faster [1] - 2231:20 fate [2] - 2248:22, 2291:14

favor [1] - 2262:10

fax [18] - 2209:19, 2209:20, 2209:21, 2240:19, 2251:16, 2251:19, 2251:25, 2252:1, 2252:5, 2265:3, 2365:17, 2365:20, 2365:24, 2366:1, 2366:3,

2366:5, 2366:7, 2367:4 **faxed** [2] - 2240:20, 2265:2

FBI [9] - 2288:25, 2312:8, 2312:12, 2313:5, 2323:11, 2324:4, 2351:13, 2354:6, 2369:17

fear [2] - 2197:11, 2197:15

February [4] - 2274:8, 2275:22, 2281:6, 2307:17

fed [1] - 2255:3

Federal [7] - 2171:7, 2175:20, 2287:20, 2295:17, 2305:14, 2305:16, 2310:20

federal [6] - 2185:1, 2188:21, 2188:23, 2190:18, 2199:20, 2288:22

fee [6] - 2208:20, 2266:19, 2295:25, 2296:8, 2300:3

fees [13] - 2215:21, 2216:1, 2216:2, 2216:9, 2259:12, 2277:2, 2321:21, 2341:15, 2343:1, 2349:15, 2363:11, 2363:25

Fellin [2] - 2278:22, 2344:1

Fellin's [1] - 2343:25 fellow [1] - 2288:20 felon [1] - 2232:24 felt [3] - 2327:9, 2350:19 female [1] - 2310:15 fervently [1] - 2249:10 **few** [9] - 2167:21, 2192:7, 2193:1, 2213:6, 2320:12, 2348:20, 2348:21, 2348:22, 2367:18 fifth [1] - 2165:10 fifty [1] - 2307:9 fight [3] - 2204:10, 2227:8, 2311:18 fighting [2] - 2232:20, 2232:21 figure [4] - 2167:11, 2306:21, 2306:22, 2330:25 figures [1] - 2261:5 file [8] - 2194:6, 2267:12, 2267:16, 2303:9, 2316:15, 2357:7, 2357:9, 2357:15 filed [5] - 2212:7, 2231:25, 2303:11, 2357:4, 2361:18 files [4] - 2211:22, 2212:9, 2299:1, 2326:9 filing [2] - 2205:23, 2283:18 filings [3] - 2237:22, 2270:12, 2280:15 fill [1] - 2350:2 filled [2] - 2175:21, 2356:9 fills [1] - 2295:22 filtered [1] - 2260:22 $\textbf{final}~ {\tiny [4]}~ \textbf{-}~ 2197:8,~ 2279:19,~ 2371:1,~ \\$ 2371:2 **finally** [8] - 2199:5, 2200:6, 2218:10, 2232:2, 2245:13, 2278:12, 2323:14, 2370:17 finance [2] - 2261:13, 2290:24 financial [15] - 2162:3, 2163:18, 2164:1, 2171:7, 2175:13, 2175:15, 2175:20, 2175:24, 2245:14, 2249:3, 2259:15, 2355:8, 2355:12, 2355:22, 2355:24 fine [6] - 2200:15, 2200:24, 2200:25, 2244:2, 2255:14, 2315:25 Fine [1] - 2360:3 finish [3] - 2348:24, 2349:1, 2361:12 finished [5] - 2217:11, 2322:24, 2331:18, 2361:12, 2368:6 fire [1] - 2339:20 firm [29] - 2181:9, 2216:18, 2216:20, 2218:17, 2226:12, 2243:9, 2252:18, 2254:10, 2269:4, 2274:3, 2276:18, 2277:15, 2278:2, 2278:4, 2281:25,

2307:15, 2319:12, 2319:25, 2320:4, 2320:17, 2321:21, 2324:12, 2325:24, 2328:6, 2328:11, 2336:21, 2339:2, 2363:5, 2367:4 firmly [2] - 2291:7, 2291:9 firms [1] - 2223:8 first [52] - 2162:9, 2164:12, 2166:10, 2170:11, 2170:13, 2177:2, 2179:16, 2180:24, 2183:15, 2190:6, 2192:9, 2193:10, 2194:3, 2195:13, 2200:1, 2200:12, 2200:13, 2201:8, 2204:15,

2210:7, 2211:5, 2211:13, 2214:7, 2225:18, 2225:20, 2226:6, 2227:19, 2241:15, 2247:22, 2258:10, 2260:20, 2265:18, 2265:19, 2266:15, 2275:17, 2275:18, 2275:23, 2281:23, 2288:22, 2292:5, 2296:1, 2304:21, 2306:8, 2306:11, 2315:9, 2319:7, 2322:21, 2324:9, 2328:8, 2335:5, 2341:10 fish [7] - 2162:14, 2167:18, 2175:2, 2295:2, 2295:3, 2298:15, 2308:16 fishing [1] - 2197:4 fits [1] - 2250:14 five [19] - 2178:14, 2186:19, 2190:3, 2190:7, 2191:7, 2203:16, 2231:3, 2294:1, 2294:20, 2297:8, 2302:9, 2307:16, 2307:18, 2335:2, 2360:11, 2360:12 fix [3] - 2167:19, 2168:2, 2168:4 flags [1] - 2264:5 flat [2] - 2208:20, 2266:19 fleas [1] - 2288:3 flee [1] - 2244:2 flies [2] - 2354:3, 2354:12 flighty [3] - 2280:8, 2346:13, 2346:14 flip [1] - 2290:16 floor[1] - 2206:18 flow [6] - 2169:19, 2225:5, 2236:12, 2242:20, 2243:2, 2356:17 flowed [1] - 2166:11 flows [3] - 2169:22, 2171:13, 2171:14 **focus** [4] - 2258:6, 2268:24, 2273:8, 2304:17 focused [3] - 2262:4, 2274:4, 2284:12 focusing [1] - 2262:7 foe [1] - 2310:15 folder [3] - 2265:9, 2265:10, 2276:9 folks [1] - 2286:20 follow [7] - 2162:5, 2162:24, 2202:13, 2235:20, 2238:8, 2267:5, 2285:12 followed [3] - 2166:24, 2266:4, 2266:24 following [15] - 2182:8, 2239:21, 2248:16, 2263:22, 2270:14, 2271:17, 2280:23, 2281:21, 2286:1, 2296:14, 2314:22, 2316:11, 2354:25, 2360:7, 2370:23 follows [3] - 2211:14, 2260:15, 2265:19 fooled [2] - 2287:6, 2300:13 FOR [1] - 2159:10 forced [2] - 2315:4, 2315:6 forefront [1] - 2344:5 forever [1] - 2316:6 forfeit [1] - 2227:9 forfeited [2] - 2227:12, 2311:14 forfeiture [2] - 2311:10, 2311:19 forget [3] - 2186:15, 2243:25, 2292:21 forgive [3] - 2243:16, 2271:9, 2272:6 forgot [4] - 2203:15, 2224:2, 2268:3, 2268:20 form [8] - 2224:13, 2334:4, 2350:2,

formed [3] - 2345:14, 2346:16 former [1] - 2301:1 forms [4] - 2169:3, 2178:24, 2187:9, 2357:11 formulate [2] - 2214:15, 2347:16 forsake [1] - 2291:13 forth [3] - 2233:19, 2233:20, 2316:16 forthright [1] - 2233:2 forward [3] - 2200:18, 2200:21, 2266:3 foul [1] - 2183:7 founded [1] - 2300:16 four [16] - 2176:7, 2177:22, 2186:19, 2187:20, 2193:7, 2193:13, 2203:16, 2205:5, 2212:5, 2231:3, 2231:4, 2292:17, 2296:22, 2307:16, 2307:18, 2325:9 four-month [1] - 2193:13 fourth [2] - 2165:10, 2206:18 frame [5] - 2174:24, 2175:5, 2178:18, 2269:9, 2288:10 framework [1] - 2246:3 frank [1] - 2166:21 fraud [39] - 2162:3, 2164:1, 2165:24, 2166:2, 2168:25, 2169:3, 2178:25, 2186:21, 2188:15, 2226:21, 2238:18, 2238:19, 2245:6, 2245:17, 2248:18, 2253:21, 2269:13, 2271:13, 2282:13, 2282:14, 2283:7, 2283:24, 2284:5, 2284:7, 2284:8, 2289:5, 2290:15, 2290:17, 2291:4, 2291:5, 2297:24, 2314:2, 2314:6, 2315:12, 2315:15, 2321:7, 2353:2 frauds [1] - 2297:12 fraudulent [9] - 2166:12, 2166:24, 2166:25, 2174:11, 2178:21, 2178:22, 2179:13, 2186:8, 2188:16 free [3] - 2262:18, 2288:11, 2328:13 freebie [2] - 2220:8, 2220:9 freebies [1] - 2220:7 freedom [3] - 2222:5, 2232:21, 2234:4 Freeman [184] - 2159:21, 2160:22, 2160:24, 2161:25, 2162:20, 2162:23, 2163:1, 2163:12, 2163:24, 2168:20, 2169:14, 2170:3, 2170:18, 2170:19, 2171:24, 2172:21, 2173:9, 2173:20, 2174:7, 2175:1, 2178:25, 2179:9, 2179:20, 2180:25, 2181:2, 2181:3, 2188:6, 2196:24, 2201:5, 2202:9, 2202:16, 2203:17, 2203:21, 2204:21, 2205:13, 2205:16, 2205:24, 2206:4, 2206:6, 2206:10, 2206:18, 2208:4, 2208:12, 2208:17, 2208:21, 2208:23, 2208:24, 2209:9, 2209:14, 2210:2, 2210:4, 2210:11, 2210:17, 2211:5, 2211:9, 2213:19, 2214:8, 2215:19, 2218:11, 2218:17, 2220:24, 2222:5, 2222:7, 2222:11, 2222:12, 2223:19, 2223:22, 2223:23, 2224:7, 2224:10, 2224:16, 2224:22, 2226:1, 2226:11, 2226:12, 2227:15, 2227:17, 2228:10, 2229:4, 2229:6, 2229:9, 2229:12,

2356:2, 2356:9, 2356:10, 2356:18

formally [1] - 2165:4

2229:16, 2229:18, 2230:12, 2230:13, 2231:9. 2234:3. 2234:13. 2234:19. 2234:23, 2235:1, 2235:18, 2235:25, 2238:2, 2240:4, 2240:10, 2240:11, 2240:14, 2240:15, 2241:20, 2242:9, 2243:8, 2250:2, 2252:17, 2254:2, 2254:10, 2258:3, 2259:1, 2259:10, 2260:9, 2261:6, 2268:8, 2268:10, 2268:18, 2269:3, 2269:21, 2272:3, 2273:11, 2274:3, 2275:20, 2276:15, 2276:22, 2276:23, 2277:8, 2277:15, 2281:25, 2282:1, 2287:18, 2290:4, 2290:23, 2307:22, 2310:23, 2318:23, 2319:11, 2319:15, 2321:24, 2322:11, 2325:4, 2328:6, 2334:12, 2338:21, 2339:8, 2339:11, 2339:19, 2339:20, 2340:3, 2340:4, 2340:8, 2340:10, 2340:16, 2340:20, 2341:9, 2353:2, 2353:15, 2354:23, 2355:11, 2357:11, 2357:17, 2358:23, 2361:17, 2361:21, 2362:3, 2362:20, 2363:4, 2363:10, 2363:13, 2363:16, 2363:17, 2363:21, 2363:24, 2364:1, 2364:8, 2365:3, 2365:24, 2366:2, 2366:3, 2366:7, 2366:13, 2366:19, 2367:13

FREEMAN [1] - 2159:7

Freeman's [11] - 2173:24, 2174:4, 2188:4, 2203:23, 2205:6, 2205:19, 2215:9, 2217:1, 2276:1, 2340:1, 2341:12

Freudian [4] - 2173:4, 2173:5, 2211:19,

friend [5] - 2190:25, 2263:1, 2310:15, 2329:19

friends [4] - 2291:13, 2312:10, 2343:21, 2344:11

front [6] - 2199:3, 2212:5, 2264:8, 2267:18, 2317:13, 2323:16

fruit [1] - 2324:18 fruition [1] - 2180:5

frustrating [1] - 2215:19

fucking [3] - 2172:8, 2186:10, 2327:11

fulcrum [1] - 2252:10

full [6] - 2186:16, 2272:18, 2284:22, 2338:24, 2355:16, 2363:19

fully [7] - 2249:13, 2249:19, 2249:20, 2316:13, 2316:22, 2331:16, 2351:10

function [2] - 2260:4, 2282:23

functional [1] - 2214:17

fund [1] - 2188:4

fundamental [2] - 2227:16, 2231:16

funding [1] - 2169:20 fundraising [1] - 2278:25 funds [2] - 2198:24, 2245:17 funneling [1] - 2261:9

funny [3] - 2180:14, 2181:8, 2339:17

G

gain [2] - 2250:21, 2252:12 gall [2] - 2227:7, 2232:12

game [3] - 2186:10, 2187:14, 2241:14 Garvey [34] - 2162:19, 2170:5, 2170:17, 2171:18, 2179:17, 2193:24, 2195:11, 2223:9, 2226:17, 2241:19, 2242:12, 2258:2, 2258:10, 2258:12, 2259:1, 2276:8, 2277:16, 2278:5, 2304:5, 2307:23, 2318:16, 2320:1, 2320:4, 2337:20, 2356:5, 2356:11, 2357:12, 2358:1, 2362:16, 2364:14, 2364:24, 2365:1, 2365:10

Gates [1] - 2280:10 gathering [1] - 2329:20 GC[1] - 2194:7

geared [1] - 2356:19

gee [1] - 2243:24 general [14] - 2169:15, 2171:24,

2192:22, 2194:6, 2218:25, 2264:8, 2267:17, 2283:16, 2305:3, 2306:13, 2306:14, 2350:3, 2350:4, 2356:16

generated [3] - 2239:15, 2245:17, 2275:9

generating [2] - 2246:25, 2364:22 generosity [5] - 2343:6, 2343:7, 2343:13, 2345:1, 2346:17

generous [4] - 2271:6, 2343:10, 2345:2, 2367:24

genius [2] - 2232:25, 2235:12 gentleman [5] - 2237:16, 2246:7, 2246:21, 2247:1, 2261:17

Gentlemen [13] - 2236:10, 2237:20, 2238:8, 2258:19, 2262:22, 2263:13, 2263:23, 2264:24, 2265:15, 2267:8, 2267:15, 2268:6, 2301:20

gentlemen [67] - 2162:6, 2163:19, 2163:25, 2167:20, 2169:19, 2170:24, 2172:18, 2176:23, 2180:21, 2181:20, 2184:14, 2186:18, 2193:2, 2197:20, 2199:10, 2199:16, 2200:5, 2201:5, 2222:3, 2228:4, 2234:6, 2236:1, 2241:17, 2241:22, 2243:2, 2244:10, 2245:24, 2248:24, 2251:2, 2251:5, 2251:20, 2251:25, 2252:15, 2253:9, 2254:21, 2254:23, 2255:1, 2273:6, 2274:13, 2274:24, 2275:14, 2276:17, 2277:13, 2281:13, 2281:21, 2282:12, 2282:25, 2283:9, 2283:14, 2284:7, 2285:4, 2286:11, 2286:23, 2288:24, 2290:14, 2290:22, 2291:24, 2292:12, 2294:23, 2298:10, 2299:3, 2300:8, 2302:20, 2305:8, 2305:22, 2308:4, 2308:25

genuine [1] - 2197:21

George [61] - 2166:2, 2172:17, 2186:22, 2187:2, 2187:4, 2192:24, 2192:25, 2193:5, 2193:6, 2194:19, 2196:22, 2197:14, 2199:5, 2199:6, 2199:11, 2218:1, 2222:9, 2222:15, 2225:8, 2226:1, 2226:3, 2289:8, 2289:11, 2289:24, 2293:14, 2293:20, 2302:3, 2302:5, 2302:6, 2302:7, 2302:8, 2302:11, 2302:12, 2302:13, 2302:18, 2303:2, 2326:18, 2326:19, 2327:1,

2327:6, 2327:9, 2327:15, 2332:10, 2333:4, 2333:10, 2349:17, 2351:12, 2351:14, 2351:22, 2351:23, 2351:25, 2352:10, 2352:11, 2352:21, 2354:15, 2358:17, 2359:3, 2359:8, 2359:12, 2359:13

Gerald [1] - 2160:23 Gershon [1] - 2160:7

GERSHON [3] - 2159:10, 2160:2, 2257:3

gin [2] - 2287:9, 2340:18

given [19] - 2176:14, 2183:21, 2196:6, 2198:20, 2204:14, 2230:10, 2237:23, 2241:4, 2247:12, 2251:12, 2272:1, 2310:8, 2322:7, 2324:8, 2324:9, 2330:4, 2358:19, 2359:14

glad [1] - 2201:9 glaring [1] - 2337:2

glow [2] - 2258:17, 2270:10

goal [1] - 2250:21 goals [1] - 2283:13 God [1] - 2181:21

golf [2] - 2174:17, 2174:18

gong [1] - 2342:2 Government [63] - 2159:13, 2160:11, 2160:13, 2161:18, 2164:17, 2165:13, 2170:25, 2171:8, 2178:17, 2187:5, 2188:12, 2211:15, 2222:25, 2230:7, 2232:13, 2232:15, 2232:17, 2233:1, 2235:24, 2236:11, 2238:3, 2238:5, 2238:7, 2238:24, 2258:1, 2258:15, 2258:17, 2258:24, 2259:2, 2259:14, 2259:15, 2260:1, 2260:13, 2261:15, 2262:4, 2263:2, 2264:1, 2265:9, 2266:7, 2266:20, 2267:1, 2267:6, 2267:24, 2270:8, 2271:11, 2284:23, 2300:4, 2301:22, 2309:10, 2311:11, 2311:15, 2311:25, 2314:7, 2314:9, 2314:15, 2314:19, 2346:23, 2353:6, 2353:16, 2353:21, 2354:2, 2354:6 government [108] - 2183:13, 2183:15, 2184:6, 2184:15, 2184:20, 2184:24, 2185:1, 2191:9, 2191:18, 2192:19, 2199:13, 2199:20, 2201:19, 2204:2, 2205:8, 2205:25, 2210:15, 2211:24, 2214:1, 2214:6, 2217:6, 2218:3,

2219:8, 2219:20, 2221:11, 2222:13, 2222:19, 2225:14, 2226:3, 2227:11, 2227:17, 2241:2, 2241:12, 2241:25, 2244:8, 2244:25, 2245:6, 2245:15, 2251:2, 2251:8, 2252:15, 2253:10, 2253:14, 2253:25, 2272:20, 2273:1, 2273:9, 2274:2, 2279:20, 2281:8, 2281:15, 2281:18, 2282:5, 2283:3, 2284:13, 2285:1, 2291:10, 2315:2, 2315:3, 2315:5, 2315:10, 2315:20, 2315:21, 2317:15, 2317:21, 2318:5, 2318:9, 2318:16, 2319:20, 2320:9, 2322:15, 2322:21, 2323:16, 2326:4, 2326:24, 2327:15, 2327:18, 2327:23, 2327:24, 2328:22, 2328:25, 2329:5, 2329:25, 2330:25, 2331:1, 2331:3,

2331:7, 2331:8, 2331:16, 2331:19, 2332:23, 2333:4, 2334:15, 2336:11, 2338:6, 2341:21, 2343:5, 2343:11, 2344:5, 2344:23, 2356:2, 2356:16, 2357:1, 2357:18, 2359:9, 2368:25, 2369:19 Government's [18] - 2173:1, 2213:5, 2229:12, 2234:24, 2251:9, 2251:15, 2251:18, 2257:22, 2258:4, 2259:3, 2263:14, 2263:19, 2270:7, 2311:2, 2312:22, 2312:23, 2313:6, 2313:19 government's [15] - 2184:10, 2191:17, 2201:12, 2212:12, 2215:17, 2224:9, 2245:20, 2245:25, 2253:12, 2273:23, 2279:9, 2292:12, 2334:19, 2334:23, 2335:22 graduate [1] - 2288:14 graft [2] - 2239:18, 2261:9 grail [1] - 2240:23 grand [4] - 2190:3, 2190:7, 2191:7, 2343:18 grandmother [1] - 2288:2 grant [2] - 2179:6, 2179:7 graphic [2] - 2327:8, 2332:11 gray [1] - 2332:12 great [9] - 2179:14, 2209:4, 2238:16, 2246:6, 2253:25, 2254:19, 2311:1, 2343:16, 2353:22 Greece [1] - 2296:24 greedy [3] - 2173:13, 2180:1, 2327:22 green [2] - 2236:18, 2254:6 Greenspan [1] - 2278:24 Gregory [2] - 2168:2, 2261:17 gritty [1] - 2178:22 grossly [1] - 2313:23 ground [1] - 2272:20 group [2] - 2267:25, 2304:23 grow [2] - 2286:15, 2291:17 guarantee [3] - 2299:3, 2305:6, 2368:11 guarantees [2] - 2368:8, 2368:13 guess [6] - 2191:3, 2229:11, 2236:1, 2267:4, 2297:8, 2352:8 guideline [1] - 2316:19 guidelines [1] - 2316:18 guilt [10] - 2228:16, 2231:9, 2243:22, 2244:9, 2244:13, 2254:22, 2255:5, 2269:1, 2278:11, 2285:9 guilty [28] - 2164:11, 2175:10, 2232:2, 2232:17, 2232:18, 2232:19, 2233:7, 2243:21, 2243:24, 2244:23, 2245:5, 2245:13, 2248:22, 2289:22, 2289:23, 2293:12, 2301:10, 2303:9, 2308:9, 2308:13, 2315:14, 2322:8, 2322:9, 2333:7, 2352:2, 2352:6, 2353:9 guise [1] - 2269:6 gun [16] - 2162:1, 2162:2, 2162:5, 2162:6, 2162:25, 2164:1, 2170:11, 2180:1, 2202:13, 2202:19, 2205:7,

2205:9, 2212:18, 2238:7, 2266:1

guy [28] - 2173:13, 2180:6, 2189:10,

2194:17, 2216:3, 2216:5, 2227:6,

2232:9, 2232:19, 2237:1, 2237:2, 2237:4, 2243:13, 2243:24, 2246:10, 2246:15, 2261:18, 2288:22, 2288:24, 2289:1, 2290:23, 2290:25, 2301:5, 2302:1, 2302:17, 2314:20, 2342:3 **guys** [13] - 2173:23, 2178:8, 2206:11, 2208:7, 2208:11, 2213:18, 2265:22, 2290:11, 2293:1, 2323:3, 2323:4, 2323:5, 2331:3 **GX** [1] - 2215:4

GX [1] - 2215:4 Н Habitat [4] - 2220:12, 2220:14, 2220:17, half [7] - 2244:12, 2255:25, 2284:21, 2292:10, 2297:7, 2308:7, 2310:1 half-hour [1] - 2310:1 halfway [1] - 2255:22 hall [1] - 2291:1 hammer [1] - 2239:17 Hancock [9] - 2166:3, 2189:13, 2189:21, 2193:1, 2193:11, 2242:6, 2260:7, 2349:16, 2349:23 hand [9] - 2208:21, 2265:7, 2267:11, 2285:12, 2321:1, 2328:10, 2333:15, 2339:1, 2339:2 handed [3] - 2232:12, 2287:23, 2309:8 handing [1] - 2333:13 handle [2] - 2270:15, 2306:25 hang [2] - 2243:14, 2291:21 hanging [1] - 2243:25 happy [1] - 2279:23 hard [11] - 2167:21, 2245:22, 2249:7, 2251:8, 2251:18, 2261:24, 2288:8, 2349:25, 2353:18, 2362:14, 2367:21 hard-money [1] - 2261:24 harder [2] - 2350:24 hardly [2] - 2222:11 Harlem [2] - 2167:25, 2168:7 harm [1] - 2183:7 harping [1] - 2327:21 Hart [2] - 2189:17, 2190:2 hasty [2] - 2287:13, 2287:14 hawing [1] - 2176:23 Haymowitz [2] - 2275:19, 2276:21 **HAYMOWITZ** [1] - 2275:20 head [1] - 2293:3 hear [16] - 2201:9, 2204:13, 2230:21, 2257:17, 2286:8, 2286:25, 2310:7, 2321:6, 2327:8, 2341:20, 2346:5,

2330:10, 2348:14, 2348:15, 2370:10 hearing [2] - 2161:17, 2263:19 heart [1] - 2166:25 heavy [2] - 2291:14, 2302:16 heed [1] - 2235:17 held [4] - 2215:12, 2291:7, 2291:9, 2295:1 hello [2] - 2211:11, 2213:7 Hello [1] - 2214:7 help [16] - 2214:5, 2216:7, 2226:4, 2232:9, 2237:5, 2237:9, 2248:10, 2259:6, 2269:8, 2273:7, 2287:9, 2291:1, 2293:5, 2303:1, 2303:9, 2341:9 helped [2] - 2247:7, 2275:15 helpful [1] - 2370:4 helping [2] - 2259:19, 2302:3 helps [2] - 2227:6, 2321:3 hemming [1] - 2176:23 hence [1] - 2267:19 Hendrickson [6] - 2184:11, 2184:19, 2184:21, 2192:17, 2284:2, 2303:8 hesitate [1] - 2224:18 hesitation [1] - 2177:7 hidden [4] - 2215:9, 2217:1, 2217:2, 2264:22 hide [8] - 2174:11, 2175:24, 2179:15, 2187:12, 2260:13, 2264:3, 2264:7, 2264:19 hiding [6] - 2206:13, 2209:21, 2215:12, 2216:16, 2281:20, 2293:16 high [24] - 2167:19, 2178:7, 2204:24, 2230:20, 2231:1, 2232:5, 2235:22, 2260:21, 2262:2, 2263:4, 2294:8, 2294:11, 2294:16, 2294:22, 2298:3, 2312:23, 2313:11, 2331:24, 2335:18, 2336:4, 2336:9, 2336:11, 2336:14 high-powered [1] - 2235:22 high-quality [1] - 2235:22 high-ranking [1] - 2178:7 higher [6] - 2241:11, 2298:11, 2334:24, 2335:19, 2367:17 highlight [1] - 2192:7 hiking [1] - 2281:2 himself [32] - 2163:12, 2175:14, 2175:22, 2176:2, 2176:5, 2179:17, 2179:22, 2186:24, 2188:5, 2189:25, 2190:16, 2194:10, 2196:12, 2217:24, 2230:7, 2241:7, 2241:10, 2246:24,

2262:25, 2278:20, 2279:7, 2284:19, 2284:24, 2288:7, 2288:21, 2312:8, 2317:14, 2321:7, 2339:12, 2344:7, 2355:14

hindsight [1] - 2270:10

hire [1] - 2350:3

hiring [3] - 2269:15, 2306:25, 2339:10

history [2] - 2242:23, 2302:25

hit [2] - 2210:6, 2214:9

hold [5] - 2193:20, 2200:6, 2221:11, 2348:21, 2349:1

holding [1] - 2370:3

2346:7, 2346:8, 2346:9, 2346:10,

heard [36] - 2162:20, 2166:17, 2167:4,

2184:9, 2184:19, 2185:2, 2185:16.

2194:1, 2201:22, 2205:7, 2205:22,

2172:12, 2173:11, 2173:12, 2174:15,

2185:18, 2185:24, 2189:16, 2192:20,

2271:11, 2273:16, 2278:22, 2278:24,

2279:2, 2289:25, 2291:21, 2297:18,

2298:17, 2300:8, 2302:5, 2312:3,

2369:13

holy [1] - 2240:23

home [8] - 2185:16, 2185:17, 2185:23, 2197:8, 2236:24, 2261:15, 2346:6, 2360:24

Home [1] - 2187:8

homes [2] - 2354:8, 2367:25 homework [2] - 2181:7, 2347:24

honest [4] - 2167:3, 2172:2, 2201:18,

2261:2

honestly [2] - 2213:25, 2347:16

honesty [4] - 2278:13, 2279:6, 2345:3,

2346:17

honeymoon [1] - 2296:25

honor [1] - 2344:8

Honor [20] - 2160:14, 2160:18, 2160:23, 2183:9, 2183:22, 2200:16, 2201:5, 2221:11, 2221:22, 2222:1, 2236:10, 2255:7, 2255:13, 2255:23, 2285:19, 2286:10, 2301:19, 2309:15, 2359:16, 2371:14

HONORABLE [1] - 2159:10

Honorable [1] - 2160:7 hoodwinked [1] - 2287:6

hope [2] - 2219:24, 2237:10

hoped [1] - 2346:23

hoping [2] - 2232:8, 2325:8

hopped [1] - 2211:24

Hospital [1] - 2274:16

hour [4] - 2255:25, 2305:17, 2310:1, 2322:22

hourly [5] - 2208:22, 2264:10, 2266:13, 2273:17, 2274:5

hours [7] - 2204:11, 2234:7, 2330:10, 2346:2, 2346:4

house [7] - 2178:16, 2200:1, 2200:2, 2296:25, 2297:4, 2297:9, 2339:19

houses [1] - 2279:4

Housing [6] - 2164:20, 2166:14, 2175:18, 2179:1, 2199:17, 2297:13

housing [2] - 2314:12, 2354:10

HPD [66] - 2164:21, 2164:24, 2165:2, 2165:8, 2165:21, 2166:10, 2166:14, 2167:11, 2168:6, 2168:7, 2168:14, 2168:23, 2169:6, 2169:9, 2171:19, 2180:8, 2186:4, 2187:22, 2189:2, 2192:10, 2192:11, 2192:14, 2200:1, 2217:23, 2218:7, 2218:12, 2218:16, 2219:3, 2222:21, 2223:1, 2229:8, 2231:23, 2231:25, 2247:22, 2260:2, 2263:7, 2265:11, 2265:15, 2269:11, 2269:13, 2269:16, 2281:24, 2282:10, 2284:6, 2303:8, 2304:25, 2305:2, 2306:19, 2310:21, 2313:4, 2346:9, 2351:24, 2352:5, 2352:23, 2353:4, 2353:13, 2354:7, 2355:19, 2356:4, 2356:6, 2356:11, 2356:12, 2357:15,

HPD's [1] - 2165:13

2367:15

HUD [15] - 2169:9, 2179:6, 2184:23, 2199:19, 2217:24, 2218:7, 2222:22, 2223:1, 2229:8, 2245:10, 2245:15,

2297:16, 2297:22, 2355:23

huddle [1] - 2288:11 huge [1] - 2353:7 **hum** [1] - 2289:10

human [3] - 2177:18, 2203:13, 2251:3 Humanities [3] - 2220:12, 2220:14,

2220:17

Humanity [1] - 2279:3

hundred [4] - 2167:21, 2184:13, 2250:1,

2307:9

hundreds [10] - 2168:18, 2178:15, 2188:9, 2199:21, 2298:10, 2334:25, 2336:10, 2353:4, 2353:19

hung [1] - 2369:10 hungry [1] - 2288:11

hurt [1] - 2183:5 Hymowitz [211] - 2159:19, 2160:19, 2162:20, 2162:23, 2163:1, 2163:3, 2168:20, 2169:13, 2170:3, 2170:18, 2170:19, 2171:23, 2172:20, 2174:23, 2175:6, 2175:10, 2175:12, 2176:4, 2176:7, 2177:25, 2179:9, 2179:22, 2180:10, 2181:5, 2181:9, 2181:18, 2185:4, 2188:2, 2188:3, 2194:15, 2196:23, 2201:23, 2202:4, 2202:5, 2202:7, 2202:15, 2202:16, 2203:17,

2203:21, 2203:23, 2205:6, 2205:13, 2206:4, 2206:23, 2208:19, 2208:25, 2209:2, 2209:4, 2209:6, 2209:7, 2209:11, 2210:11, 2211:5, 2212:8,

2215:9, 2215:14, 2215:19, 2216:4, 2217:1, 2217:20, 2218:11, 2218:17, 2218:21, 2219:2, 2219:5, 2219:8,

2219:9, 2219:11, 2219:14, 2219:19, 2220:14, 2220:24, 2226:12, 2230:1, 2232:4, 2238:1, 2238:4, 2240:2,

2240:4, 2240:10, 2240:11, 2241:5, 2241:20, 2241:24, 2242:3, 2242:8, 2242:9, 2243:8, 2243:11, 2243:21,

2244:14, 2244:23, 2245:1, 2248:12, 2250:2, 2254:2, 2254:10, 2255:5,

2258:2, 2259:1, 2259:9, 2259:16, 2259:18, 2260:9, 2262:5, 2262:9,

2262:21, 2263:8, 2264:2, 2268:1, 2268:3, 2268:10, 2268:18, 2268:20,

2269:2, 2269:3, 2269:22, 2270:15, 2270:16, 2270:21, 2271:1, 2271:4,

2273:11, 2274:3, 2276:15, 2276:20, 2276:22, 2277:7, 2277:15, 2278:11,

2280:25, 2281:3, 2281:23, 2281:25, 2282:7, 2282:8, 2282:17, 2284:8,

2284:20, 2285:14, 2287:19, 2290:2, 2290:24, 2307:22, 2310:23, 2312:14,

2318:23, 2319:15, 2321:25, 2322:12, 2323:13, 2323:20, 2324:19, 2324:23,

2325:20, 2326:5, 2328:6, 2331:3, 2334:12, 2338:14, 2338:19, 2339:7,

2339:10, 2339:18, 2340:6, 2340:9, 2340:14, 2340:15, 2340:17, 2340:19,

2340:24, 2341:1, 2341:5, 2341:14, 2341:18, 2342:10, 2342:15, 2343:14,

2343:17, 2343:20, 2344:4, 2344:8,

2344:24, 2345:13, 2345:17, 2345:18, 2346:10, 2346:15, 2347:23, 2348:15, 2353:2, 2353:15, 2354:16, 2354:18, 2355:5, 2355:6, 2364:4, 2365:24, 2366:2, 2366:3, 2366:7, 2366:12, 2366:19, 2367:3, 2367:4, 2367:12, 2367:24

HYMOWITZ [1] - 2159:7

Hymowitz's [20] - 2180:2, 2180:16, 2181:16, 2196:5, 2197:6, 2208:18, 2218:21, 2219:13, 2255:10, 2262:21, 2264:14, 2270:14, 2320:4, 2343:5, 2343:6, 2343:12, 2344:20, 2345:4,

2346:17, 2348:7 hypothetical [1] - 2300:4 hysteric [1] - 2303:3

I

idea [20] - 2172:16, 2198:17, 2210:20, 2220:17, 2242:8, 2242:10, 2277:6, 2312:12, 2312:18, 2320:16, 2328:21, 2330:25, 2331:1, 2331:2, 2332:21, 2334:12, 2334:13, 2334:14, 2340:9, 2365:22

identifications [2] - 2293:7, 2293:9

identified [1] - 2176:5

identify [3] - 2293:8, 2350:11, 2357:24

identities [1] - 2314:10

Ides [4] - 2286:12, 2286:16, 2286:17,

2286:18

ignorance [1] - 2261:25

ignore [1] - 2311:8

illegal [2] - 2186:7, 2227:10

illegally [1] - 2220:5 illuminate [1] - 2254:16 illuminates [1] - 2237:14

imagine [2] - 2236:24, 2353:18

immigrant [1] - 2232:11 imperfect [1] - 2243:1 **impertinence** [1] - 2309:16

implanted [1] - 2214:24 implicated [1] - 2321:7

implicates [4] - 2223:21, 2241:7,

2241:10, 2321:17

implying [2] - 2353:17, 2365:23 importance [1] - 2275:21

important [15] - 2162:16, 2170:15, 2180:11, 2189:24, 2211:15, 2220:3, 2220:11, 2224:19, 2227:25, 2283:1,

2303:25, 2308:7, 2313:18, 2363:12, 2369:25

importantly [2] - 2195:16, 2202:10 imposed [3] - 2253:5, 2317:4, 2317:6 impossible [2] - 2178:23, 2320:10

improper [2] - 2188:24, 2360:22

improve [1] - 2344:10

impunity [3] - 2345:3, 2346:18, 2346:25 inadvertently [2] - 2261:6, 2283:12 inappropriately [1] - 2263:3

incarnation [1] - 2260:6 inches [1] - 2366:6 include [1] - 2164:17 included [1] - 2261:6 including [4] - 2240:2, 2291:11, 2310:22, 2313:3 income [3] - 2216:20, 2261:4, 2297:7 inconsistencies [1] - 2354:17

inconsistent [13] - 2267:7, 2267:8, 2320:25, 2321:15, 2322:5, 2322:18, 2323:17, 2339:4, 2346:15, 2347:12, 2348:6, 2348:7, 2365:7

inconvenient [1] - 2198:11 incorrect [2] - 2259:13, 2312:14

increase [1] - 2241:9

increased [2] - 2334:25, 2336:9

incredibly [1] - 2181:14 incredulity [1] - 2250:7 increments [1] - 2180:18 incriminating [1] - 2212:23 inculpatory [2] - 2212:22, 2265:25 indeed [2] - 2246:16, 2276:24

indicate [2] - 2239:10, 2367:6 indicated [1] - 2330:3

indicates [4] - 2218:25, 2219:14, 2229:6, 2363:18

indicating [1] - 2236:15

indication [3] - 2281:9, 2336:8, 2336:14 indicted [4] - 2196:25, 2197:3, 2205:21,

2238:18 indictment [5] - 2196:19, 2244:24,

2245:14, 2268:24, 2291:8 indisputable [1] - 2163:23

individual [8] - 2250:16, 2280:9, 2356:1, 2356:9, 2356:17, 2356:18,

2357:11, 2361:18

individually [2] - 2332:17, 2357:16 individuals [6] - 2261:25, 2263:10, 2312:6, 2314:10, 2315:5, 2332:20

inducement [1] - 2274:22 industry [2] - 2180:12, 2304:20

inference [1] - 2293:21 inferences [5] - 2175:10, 2278:20, 2291:23, 2291:25, 2359:23

inflammation [1] - 2286:14

inflate [1] - 2245:2

inflated [10] - 2169:25, 2186:25, 2202:2, 2223:22, 2223:23, 2245:11, 2297:25,

2300:6, 2300:9, 2300:10 influence [1] - 2188:25

 $\pmb{\text{influenced}}\ {\tiny [2]}\ -\ 2164:23,\ 2189:7$

Influenced [1] - 2164:13 influential [1] - 2279:16

information [9] - 2178:5, 2197:5, 2265:25, 2273:18, 2308:21, 2341:25,

2342:4, 2342:8, 2369:18 inherent [1] - 2280:13 initial [1] - 2260:10 ink [1] - 2233:18

inkblot [3] - 2204:16, 2204:17 innocence [5] - 2235:21, 2235:23,

2244:14, 2269:1, 2278:9 innocent [7] - 2190:25, 2198:6, 2244:15, 2330:8, 2330:21, 2330:24, 2353:8

inside [2] - 2290:20, 2304:25

instead [5] - 2173:7, 2211:18, 2262:16, 2268:11, 2332:8

instill [1] - 2197:15

instruct [15] - 2163:5, 2164:17, 2165:3, 2175:8, 2177:3, 2198:2, 2254:18, 2278:14, 2301:8, 2301:14, 2301:21, 2311:5, 2313:21, 2363:24, 2369:23

instructing [1] - 2370:16

instructions [6] - 2164:7, 2235:20, 2283:1, 2341:23, 2359:25, 2370:12

insufficient [1] - 2198:24 insulting [1] - 2346:13 integrity [2] - 2314:12, 2354:7 intend [3] - 2260:17, 2309:17, 2357:8

intended [7] - 2197:15, 2245:10, 2269:2, 2269:5, 2288:9, 2318:17,

2357:20

intending [1] - 2355:19 intense [1] - 2269:17

intent [11] - 2165:21, 2190:20, 2237:25, 2245:4, 2245:19, 2272:5, 2272:7, 2282:13, 2283:14, 2285:8, 2364:1

intention [1] - 2354:10

intentionally [2] - 2225:5, 2229:10

intently [2] - 2201:6, 2221:10 interacting [1] - 2288:8

interactions [1] - 2345:13 interest [24] - 2163:18, 2175:13,

2175:15, 2175:21, 2175:24, 2184:18, 2262:3, 2262:5, 2262:16, 2262:24, 2263:5, 2271:5, 2272:12, 2280:5, 2296:17, 2303:16, 2303:18, 2331:11,

2331:12, 2355:9, 2355:13, 2355:15, 2355:23, 2355:24

interesting [2] - 2164:2, 2266:2

interestingly [1] - 2240:7 Interfaith [2] - 2278:23, 2279:1

internal [1] - 2303:19 internally [1] - 2273:19 International [1] - 2295:12 interpretation [1] - 2226:10

interstate [3] - 2165:2, 2169:2, 2187:22 interview [3] - 2225:14, 2225:18, 2239:7

interviewing [1] - 2243:18 interviews [1] - 2225:14 intimidated [1] - 2197:12 intimidation [1] - 2198:16 introduce [1] - 2219:2

introduced [1] - 2261:15 investigate [2] - 2243:6, 2330:25

investigated [1] - 2284:22 investigating [2] - 2315:3, 2354:1 Investigation [2] - 2287:21, 2295:17 investigation [17] - 2239:14, 2245:25,

2258:1, 2287:24, 2304:16, 2310:19, 2310:20, 2316:9, 2324:18, 2330:20, 2351:14, 2352:23, 2352:25, 2353:7, 2354:2, 2367:11, 2369:20

Investigation's [1] - 2305:14 investigations [1] - 2243:19

investigative [3] - 2242:2, 2332:23,

2353:24

investment [1] - 2282:20 invite [2] - 2192:11, 2192:15

invoice [12] - 2181:10, 2247:18, 2264:7, 2267:11, 2267:12, 2267:16, 2277:24, 2290:3, 2292:20, 2305:20, 2347:10

invoices [44] - 2173:10, 2173:17, 2173:19, 2179:19, 2181:1, 2181:14, 2186:25, 2223:10, 2227:3, 2240:5, 2247:1, 2247:3, 2264:22, 2267:1, 2269:15, 2277:21, 2278:1, 2289:10, 2289:21, 2289:25, 2290:1, 2290:5, 2290:10, 2297:25, 2303:23, 2315:7, 2319:10, 2337:1, 2337:15, 2358:6, 2358:10, 2358:15, 2358:19, 2358:20, 2358:22, 2359:4, 2359:11, 2359:12, 2359:15, 2364:11, 2365:1, 2365:2

involved [21] - 2187:25, 2217:22, 2219:8, 2219:9, 2220:13, 2242:15, 2244:1, 2261:8, 2262:5, 2262:9, 2274:9, 2274:15, 2278:24, 2281:10, 2281:18, 2283:4, 2283:5, 2283:6, 2283:7, 2283:24, 2289:18

involvement [2] - 2163:11, 2239:1

involves [2] - 2245:23, 2340:22 IOLA[1] - 2203:18

Iron [1] - 2326:6 irrelevant [1] - 2234:18

IRS [8] - 2208:5, 2214:1, 2215:7, 2215:11, 2215:13, 2216:17, 2216:24, 2227:4

Island [1] - 2274:15

isolation [1] - 2183:23

issue [7] - 2165:11, 2230:15, 2273:8, 2284:13, 2304:3, 2338:18, 2350:25

issued [1] - 2208:14

issues [5] - 2271:3, 2284:15, 2285:7, 2345:5, 2349:5

itemized [3] - 2209:12, 2209:25, 2223:13

items [3] - 2166:5, 2168:18, 2227:23 itself [2] - 2258:17, 2264:5

J

jack [1] - 2191:6 jack-up [1] - 2191:6

jail [11] - 2232:25, 2238:20, 2241:8, 2248:20, 2250:4, 2250:19, 2308:9, 2317:17, 2331:10, 2331:15, 2331:17

Jantar [1] - 2364:21

January [16] - 2171:16, 2171:23, 2203:16, 2203:19, 2216:9, 2258:7, 2269:20, 2274:8, 2275:18, 2275:19, 2275:24, 2276:2, 2276:3, 2281:6,

2307:11, 2339:18

2291:24, 2301:8, 2301:15, 2344:14,

2359:2, 2359:20, 2360:6, 2360:23, 2361:5, 2361:7, 2361:9, 2361:10,

jar [2] - 2347:19, 2347:20 Jerry [1] - 2300:15 jig [1] - 2218:4 Jimmy [4] - 2294:10, 2294:11, 2294:13, 2294:18 job [34] - 2167:7, 2175:8, 2194:18, 2223:21, 2229:18, 2231:2, 2233:3, 2247:10, 2247:12, 2286:24, 2296:21, 2296:22, 2301:20, 2301:21, 2301:22, 2302:16, 2308:3, 2308:20, 2310:24, 2313:12, 2328:15, 2328:18, 2335:8, 2335:13, 2335:21, 2336:24, 2339:24, 2341:25, 2346:3, 2349:21, 2349:25, 2350:13, 2367:21 jobs [10] - 2209:5, 2247:20, 2269:12, 2269:13, 2269:14, 2272:12, 2273:24, 2273:25, 2329:12, 2339:10 jobsite [2] - 2364:18, 2364:24 jobsites [1] - 2365:11 John [1] - 2278:22 Johnny [5] - 2294:7, 2294:8, 2294:9, 2294:13, 2294:18 joined [1] - 2245:3 joints [1] - 2340:18 joke [1] - 2347:18 Joseph [1] - 2226:20 **JP** [1] - 2176:4 JR [1] - 2159:17 **JUDGE** [1] - 2159:11 judge [8] - 2200:12, 2200:22, 2201:2, 2297:17, 2304:24, 2317:13, 2369:14, 2369:23 Judge [12] - 2160:2, 2221:1, 2221:14, 2233:8, 2257:3, 2282:25, 2311:5, 2313:21, 2315:25, 2332:17, 2348:20, 2360:9 judges [1] - 2251:6 judging [2] - 2269:1, 2332:20 judgment [1] - 2304:3 Julius [1] - 2286:17 July [5] - 2193:11, 2225:17, 2238:18, 2248:17, 2278:6 jump [2] - 2231:19, 2304:13 Junior [1] - 2308:19 Junior's [1] - 2302:17 Juniors [1] - 2293:21 Juror [1] - 2309:9 jurors [3] - 2161:1, 2309:3, 2360:4 **Jurors** [1] - 2161:12 JURY [6] - 2159:10, 2161:13, 2161:23, 2257:11, 2309:4, 2310:13 jury [54] - 2200:19, 2201:5, 2221:20, 2221:23, 2221:24, 2241:17, 2241:22, 2243:3, 2244:10, 2244:18, 2245:24, 2251:2, 2251:6, 2251:25, 2252:15,

2253:9, 2254:21, 2254:23, 2255:15,

2257:6, 2274:13, 2274:25, 2275:14,

2276:17, 2277:13, 2278:8, 2279:21,

2281:13, 2281:21, 2282:12, 2282:25,

2283:10, 2283:15, 2284:8, 2285:5,

2285:11, 2286:1, 2286:5, 2286:11,

2362:5, 2370:2, 2370:23

Jury [20] - 2161:11, 2161:15, 2221:6, 2236:11, 2237:20, 2238:8, 2255:20, 2257:9, 2258:19, 2262:22, 2263:13, 2263:24, 2264:24, 2265:15, 2267:8, 2267:15, 2268:6, 2301:20, 2310:7, 2348:25

justice [1] - 2232:23

justified [1] - 2180:23

justify [3] - 2173:22, 2324:11, 2362:14

Κ

keen [1] - 2175:24

keep [17] - 2176:2, 2232:14, 2247:3, 2261:2, 2263:4, 2264:15, 2267:4, 2268:12, 2284:15, 2303:25, 2304:24, 2307:13, 2308:15, 2326:8, 2326:9, 2326:10, 2327:21 kept [4] - 2183:2, 2194:10, 2201:21, 2265:10 Keystone [2] - 2223:8, 2248:2 keystone [1] - 2226:20 Khalif [1] - 2308:20 kickback [78] - 2165:24, 2169:6, 2170:23, 2171:6, 2173:11, 2173:15, 2174:9, 2174:11, 2175:25, 2177:9, 2177:11, 2178:9, 2183:5, 2185:13, 2186:17, 2187:2, 2188:3, 2188:13, 2202:3, 2202:9, 2202:10, 2202:18, 2210:23, 2210:25, 2211:17, 2212:19, 2223:23, 2227:21, 2228:1, 2229:5, 2229:7, 2238:4, 2240:15, 2241:10, 2252:18, 2252:21, 2257:22, 2258:9, 2264:3, 2264:7, 2264:19, 2265:11, 2269:24, 2273:11, 2273:20, 2280:24, 2281:10, 2292:23, 2292:25, 2296:15, 2318:6, 2318:12, 2318:15, 2318:24, 2319:4, 2321:25, 2326:21, 2328:8, 2328:11, 2336:19, 2337:6, 2337:23, 2340:23, 2341:2, 2341:6, 2341:8, 2351:5, 2357:19, 2357:20, 2358:2, 2358:6, 2358:14, 2359:14, 2362:17, 2363:22, 2365:7, 2368:20 kickbacks [25] - 2162:14, 2163:20, 2164:23, 2166:2, 2167:7, 2167:8, 2167:18, 2174:6, 2178:5, 2180:9, 2186:22, 2239:1, 2245:1, 2247:2, 2249:3, 2263:25, 2281:14, 2285:2, 2315:8, 2329:12, 2333:14, 2349:20, 2365:5, 2365:11, 2368:18 kicked [2] - 2349:21, 2350:15 kicking [1] - 2242:17 kid [1] - 2194:17 kidding [1] - 2194:16 killing [2] - 2206:21, 2208:2 kind [15] - 2173:21, 2181:7, 2187:10, 2227:13, 2227:14, 2228:16, 2232:6,

2311:21, 2324:4, 2325:3, 2347:23 kinds [1] - 2263:10 knocked [6] - 2289:17, 2336:5, 2349:21, 2349:22, 2350:10 knocking [1] - 2183:17 knowing [12] - 2224:11, 2235:13, 2242:15, 2245:11, 2312:8, 2314:7, 2314:8, 2314:9, 2315:2, 2327:4, 2329:4, 2340:25 knowingly [3] - 2225:5, 2229:9, 2281:15 knowledge [11] - 2168:25, 2235:15, 2237:24, 2245:3, 2245:19, 2246:22, 2282:13, 2283:14, 2285:8, 2312:5, 2364:2 known [5] - 2230:14, 2317:2, 2327:15, 2336:2, 2341:5 knows [27] - 2197:2, 2205:21, 2208:24, 2210:25, 2212:10, 2212:24, 2212:25, 2213:3, 2213:5, 2218:12, 2223:22, 2228:13, 2229:16, 2232:21, 2232:22, 2233:5, 2249:4, 2276:19, 2314:7, 2322:8, 2322:21, 2323:6, 2324:23, 2329:14, 2331:24, 2355:16, 2363:17 Koczon [5] - 2223:9, 2226:25, 2227:6, 2253:2 **Kozcon** [1] - 2248:6 Kuzcon [1] - 2247:1

2251:3, 2279:15, 2280:13, 2281:19,

L

Labor [1] - 2305:14 labor [1] - 2282:22 labored [1] - 2284:21 laborer [1] - 2246:23 lack [7] - 2206:2, 2206:3, 2222:6, 2230:16, 2231:17, 2235:20, 2282:4 Ladies [13] - 2236:10, 2237:20, 2238:8, 2258:18, 2262:22, 2263:13, 2263:23, 2264:24, 2265:15, 2267:8, 2267:15, 2268:5, 2301:20 ladies [66] - 2162:5, 2163:19, 2163:25, 2167:20, 2169:19, 2170:24, 2172:18, 2176:23, 2180:21, 2181:20, 2184:14, 2186:18, 2193:2, 2197:19, 2199:10, 2199:16, 2200:5, 2201:5, 2222:3, 2228:4, 2234:6, 2236:1, 2241:17, 2241:21, 2243:2, 2244:10, 2245:23, 2248:24, 2251:2, 2251:5, 2251:20, 2251:24, 2252:14, 2253:9, 2254:21, 2254:23, 2255:1, 2273:6, 2274:13, 2274:24, 2275:14, 2276:17, 2277:13, 2281:12, 2281:21, 2282:12, 2282:25, 2283:9, 2283:14, 2284:7, 2285:4, 2286:11, 2286:23, 2288:24, 2290:13, 2291:24, 2292:11, 2294:23, 2298:10, 2299:3, 2300:7, 2302:20, 2305:8, 2305:21, 2308:3, 2308:25 lady [1] - 2298:22 laid [1] - 2301:2 lamp [1] - 2237:1

landed [1] - 2268:6 language [1] - 2253:21

large [11] - 2172:8, 2172:12, 2185:12, 2226:15, 2267:25, 2272:21, 2318:4, 2327:11, 2333:3, 2337:8, 2362:21

larger [1] - 2364:19 largest [1] - 2328:11

last [16] - 2191:12, 2234:11, 2234:20, 2237:11, 2237:16, 2270:15, 2271:11, 2305:23, 2310:8, 2317:7, 2353:14, 2354:4, 2354:5, 2365:19, 2369:20, 2370:7

laundry [1] - 2330:6 **Law** [1] - 2215:20

law [27] - 2176:2, 2181:9, 2186:13, 2218:6, 2226:12, 2232:3, 2243:8, 2243:17, 2247:25, 2249:13, 2254:10, 2274:3, 2278:2, 2278:4, 2281:25, 2285:12, 2292:17, 2301:9, 2301:15, 2301:21, 2301:22, 2316:13, 2320:17, 2328:6, 2336:21, 2363:5, 2370:12

laws [1] - 2217:16

lawsuit [3] - 2218:5, 2218:14, 2269:13

lawsuits [1] - 2269:10

lawyer [18] - 2163:11, 2174:7, 2194:15, 2204:13, 2209:10, 2235:3, 2235:10, 2235:12, 2236:3, 2266:15, 2271:10, 2272:18, 2279:21, 2280:16, 2290:22, 2337:12, 2340:11, 2345:5

lawyering [1] - 2300:5

lawyers [23] - 2164:5, 2166:17, 2170:1, 2174:21, 2185:7, 2215:24, 2225:15, 2231:8, 2235:3, 2248:21, 2264:2, 2272:15, 2287:1, 2292:15, 2313:23, 2322:17, 2322:18, 2338:22, 2342:24, 2357:23, 2357:25, 2358:10, 2365:6

lay [1] - 2288:3

layaway [1] - 2292:23 laying [1] - 2368:9 Lazarus [1] - 2288:10

lead [3] - 2162:25, 2242:1, 2287:24

leading [1] - 2297:10

learn [2] - 2292:16, 2293:15 **learned** [2] - 2288:7, 2331:4

least [8] - 2165:14, 2198:11, 2247:22, 2276:2, 2276:15, 2280:11, 2289:24, 2306:20

leave [8] - 2185:9, 2234:16, 2295:9, 2298:3, 2305:12, 2329:22, 2356:4, 2369:22

leaves [2] - 2279:24, 2307:22 **led** [5] - 2166:23, 2178:5, 2244:5, 2269:25, 2287:6

LEE [1] - 2159:7

Lee [150] - 2159:19, 2160:19, 2162:23, 2175:3, 2179:21, 2180:10, 2180:16, 2194:15, 2197:6, 2201:23, 2202:4, 2202:5, 2202:7, 2206:23, 2208:18, 2208:19, 2208:24, 2208:25, 2209:6, 2209:7, 2211:25, 2213:8, 2213:9, 2213:11, 2213:16, 2213:23, 2214:8,

2215:14, 2216:4, 2217:20, 2220:14, 2238:1, 2238:3, 2241:24, 2242:3, 2244:14, 2244:23, 2244:25, 2245:5, 2245:13, 2245:17, 2255:5, 2255:10, 2259:9, 2259:18, 2260:9, 2260:15, 2260:23, 2260:25, 2261:2, 2261:22, 2261:23, 2262:5, 2262:6, 2263:1, 2263:2, 2263:8, 2265:20, 2266:4, 2267:1, 2268:1, 2268:3, 2268:4, 2268:10, 2268:20, 2269:1, 2269:2, 2269:4, 2269:7, 2269:8, 2269:17, 2269:18, 2269:22, 2269:23, 2269:25, 2272:12, 2272:17, 2272:22, 2273:12, 2273:18, 2273:23, 2273:24, 2274:9, 2274:10, 2274:22, 2275:11, 2275:23, 2278:11, 2278:22, 2278:25, 2279:2, 2279:9, 2279:13, 2279:15, 2279:21, 2280:6, 2280:10, 2280:15, 2280:19, 2280:25, 2281:3, 2281:6, 2281:8, 2281:9, 2281:15, 2281:17, 2281:19, 2281:23, 2281:24, 2282:7, 2282:17, 2283:4, 2284:1, 2284:8, 2284:20, 2285:14, 2287:19, 2290:2, 2290:24, 2310:23, 2318:23, 2320:4, 2321:24, 2322:12, 2323:13, 2323:20, 2331:3, 2334:12, 2339:7, 2339:10, 2339:18, 2340:6, 2340:9, 2340:19, 2340:24, 2341:13, 2342:9, 2342:15, 2343:14, 2343:17, 2344:8, 2347:23, 2348:7, 2355:5, 2355:6

Lee's [20] - 2245:19, 2260:13, 2266:11, 2266:12, 2266:21, 2270:2, 2273:8, 2273:13, 2274:1, 2274:14, 2275:1, 2275:5, 2275:15, 2278:12, 2279:6, 2279:14, 2280:3, 2282:23

left [4] - 2180:9, 2211:24, 2280:22, 2326:1

legal [18] - 2173:21, 2216:2, 2220:6, 2240:11, 2264:9, 2270:4, 2275:9, 2321:21, 2338:21, 2338:23, 2338:24, 2341:10, 2341:11, 2341:15, 2363:11, 2363:25, 2364:1, 2364:5

legally [1] - 2220:5

legitimate [19] - 2169:17, 2180:16, 2181:15, 2194:11, 2195:8, 2250:8, 2272:24, 2304:9, 2340:12, 2352:19, 2354:7, 2355:17, 2355:18, 2357:7, 2363:8, 2363:9, 2368:22

lender [1] - 2169:10 lenders [1] - 2171:8

length [4] - 2260:8, 2312:4, 2312:11, 2360:23

lengths [3] - 2179:14, 2348:13, 2353:22

lengthy [1] - 2311:8

leniency [2] - 2249:5, 2249:10 less [10] - 2193:11, 2233:4, 2305:17, 2305:25, 2306:4, 2307:20, 2314:2,

2314:5, 2339:23, 2346:22

letter [18] - 2175:16, 2175:19, 2213:18, 2214:23, 2214:25, 2216:8, 2224:12, 2230:8, 2232:21, 2240:24, 2241:9, 2249:23, 2264:4, 2331:14, 2355:6,

2355:10, 2355:24

letterhead [1] - 2326:14

letting [1] - 2367:16 levels [1] - 2323:9

Lexington [7] - 2185:22, 2193:19, 2242:4, 2260:5, 2295:25, 2337:24, 2349:22

liability [1] - 2315:17

liar [4] - 2230:14, 2232:16, 2325:20, 2325:21

liars [2] - 2287:22, 2287:23

lie [37] - 2173:16, 2176:25, 2178:3, 2178:11, 2184:24, 2193:13, 2194:3, 2198:3, 2198:5, 2224:12, 2226:18, 2242:24, 2245:2, 2246:11, 2246:15, 2246:21, 2247:7, 2248:9, 2248:16, 2250:17, 2251:13, 2253:6, 2292:2, 2323:18, 2323:21, 2325:2, 2325:3, 2330:14, 2331:10, 2335:20, 2346:24,

2347:18, 2348:2, 2355:9, 2355:10 **lied** [7] - 2191:24, 2196:11, 2232:17, 2246:18, 2247:21, 2297:2, 2351:1

lien [2] - 2194:6, 2194:7

lies [9] - 2194:23, 2196:5, 2197:6, 2314:16, 2345:3, 2346:18, 2354:17, 2355:12, 2355:13

life [11] - 2224:21, 2232:20, 2237:7, 2242:25, 2248:20, 2250:4, 2250:19, 2278:21, 2289:14, 2325:24, 2346:3

life's [1] - 2368:9

lifetime [1] - 2278:13

light [10] - 2237:13, 2237:24, 2238:12, 2241:22, 2242:21, 2243:3, 2249:6, 2270:10, 2273:16, 2353:17

light's [5] - 2237:18, 2238:5, 2253:18, 2254:7, 2254:16

lighted [1] - 2326:25 lights [1] - 2338:8 likelihood [1] - 2243:14 likely [2] - 2275:25, 2293:11

limit [1] - 2261:5

limited [2] - 2273:17, 2304:11 line [15] - 2166:5, 2168:18, 2214:18, 2243:2, 2296:3, 2335:5, 2340:14, 2343:17, 2365:17, 2365:20, 2365:24, 2366:1, 2366:7, 2367:19, 2368:10

lines [2] - 2306:9, 2366:8

link [1] - 2308:10

lips [4] - 2218:20, 2218:21, 2219:4, 2228:4

list [6] - 2192:14, 2192:22, 2252:13, 2329:22, 2330:6

listed [2] - 2247:18, 2312:11

listen [12] - 2196:13, 2196:16, 2205:18, 2220:19, 2230:17, 2231:1, 2290:8, 2302:13, 2302:17, 2305:3, 2359:18, 2370:14

listened [4] - 2201:6, 2201:20, 2221:10, 2236:3

lists [4] - 2260:10, 2329:10, 2330:8, 2331:22

lit [3] - 2310:17, 2317:12, 2348:10

litany [1] - 2358:13

literally [4] - 2162:13, 2170:14, 2190:15,

2193:3

live [1] - 2296:2

lived [1] - 2235:14 lives [2] - 2224:20, 2343:20

living [3] - 2186:1, 2197:16, 2294:15

lo [1] - 2219:18

loads [1] - 2289:20

loan [8] - 2261:23, 2261:24, 2262:6, 2262:11, 2262:13, 2262:19, 2303:19,

2350:22

loaning [2] - 2263:1, 2263:2

loans [6] - 2261:24, 2263:9, 2271:6,

2303:16, 2350:5, 2350:23

locate [1] - 2211:21

location [1] - 2308:16

logic [1] - 2303:5

long-term [1] - 2310:19

longest [1] - 2294:5

look [55] - 2169:7, 2170:9, 2171:2,

2175:6, 2175:8, 2176:8, 2184:14,

2188:7, 2188:19, 2193:9, 2195:12,

2206:5, 2207:1, 2213:24, 2214:24,

2215:17, 2218:23, 2223:11, 2231:16,

2235:4, 2243:17, 2245:21, 2251:19,

2262:21, 2268:3, 2273:13, 2273:15,

2274:6, 2276:12, 2279:20, 2285:6,

2285:13, 2287:15, 2289:18, 2293:18,

2304:20, 2305:5, 2305:21, 2307:1,

2318:7, 2325:11, 2328:2, 2330:23,

2332:16, 2332:25, 2334:9, 2336:17,

2338:7, 2352:10, 2356:24, 2357:23,

2358:7, 2366:4, 2366:18

looked [6] - 2191:23, 2205:24, 2265:9,

2265:12, 2309:18, 2353:16

looking [6] - 2178:23, 2196:3, 2237:2,

2237:15, 2237:17, 2261:13

looks [2] - 2237:18, 2293:22

looseleaf [1] - 2266:25

LORETTA [1] - 2159:13 lose [2] - 2308:16, 2368:16

losing [1] - 2304:20

lost [8] - 2180:23, 2211:5, 2237:6,

2263:17, 2336:12, 2349:9, 2349:19,

2368:10

Lou [2] - 2280:4, 2280:8

loudly [1] - 2311:1

Louis [1] - 2312:8

love [1] - 2191:2

loves [1] - 2321:4

low [2] - 2168:3, 2272:17

lowest [4] - 2167:16, 2283:17, 2283:20,

2342:7

luck [1] - 2289:13

lump [1] - 2180:19

lunch [10] - 2239:10, 2242:7, 2254:13,

2255:8, 2255:16, 2255:17, 2256:7,

2323:15, 2370:18

luncheon [2] - 2256:9, 2309:8

Lutheran [10] - 2180:15, 2266:11, 2272:14, 2274:4, 2274:19, 2323:15, 2326:12, 2341:9, 2341:13, 2342:4

lying [13] - 2232:18, 2232:19, 2246:18,

2251:7, 2252:16, 2266:12, 2316:4, 2321:1, 2321:13, 2323:21, 2326:1,

2331:17

LYNCH [1] - 2159:13

М

macro [1] - 2297:17

Madness [1] - 2286:20

madness [1] - 2286:21

Magidson [3] - 2349:11, 2350:14,

2351:3

mail [8] - 2168:24, 2169:3, 2172:25,

2178:24, 2211:13, 2211:14, 2245:5,

mailing [2] - 2169:3, 2178:24

maintenance [1] - 2270:22

majority [2] - 2280:1, 2280:11

malfeasance [1] - 2273:2

man [33] - 2168:2, 2190:3, 2190:7,

2196:7, 2197:2, 2219:20, 2219:23,

2224:1, 2227:7, 2227:13, 2227:14,

2248:8, 2250:18, 2263:24, 2271:6,

2298:18, 2298:19, 2303:13, 2303:16,

2317:23, 2317:24, 2322:6, 2338:10,

2338:11

managed [1] - 2300:23

managing [1] - 2306:25

manipulating [1] - 2321:2

manufacturing [1] - 2213:24

2286:12, 2286:16, 2286:17, 2286:19,

Marcus [34] - 2162:19, 2170:4, 2170:17, 2171:18, 2179:17, 2193:24, 2195:11,

2223:9, 2226:17, 2241:19, 2242:12,

2307:23, 2318:16, 2319:25, 2320:4,

2337:19, 2356:4, 2356:11, 2357:12,

2358:1, 2362:16, 2364:14, 2364:23,

2365:1, 2365:10 Marcy [2] - 2198:15, 2199:3

Marett [1] - 2280:8

margins [1] - 2366:6

MARIE [1] - 2159:16

Marie [5] - 2184:11, 2184:19, 2192:17,

2284:2, 2303:8

marked [1] - 2259:3

market [3] - 2298:15, 2351:3, 2351:4

marketers [2] - 2350:11, 2350:12

marshal [1] - 2343:18

Martha's [1] - 2199:23

mass [1] - 2310:20

masses [1] - 2288:11

massive [2] - 2314:11, 2354:6 **match** [6] - 2298:1, 2327:12, 2327:17,

2366:1, 2366:9, 2366:10

matches [4] - 2333:5, 2366:8, 2366:12,

2366:13

Materials [1] - 2252:23

math [6] - 2296:11, 2297:6, 2297:9,

2298:7, 2307:10, 2307:18

mathematics [1] - 2307:4

matter [14] - 2199:1, 2199:4, 2214:14,

2232:15, 2251:4, 2260:9, 2266:1,

2267:10, 2268:5, 2273:10, 2292:1,

2317:9, 2345:10

matters [1] - 2300:20

Maurice [2] - 2160:20, 2251:21 maximum [3] - 2179:7, 2297:4, 2297:5

MCR [25] - 2162:11, 2169:14, 2171:12,

2193:19, 2202:21, 2203:8, 2203:21,

2203:23, 2205:15, 2210:6, 2216:14,

2258:9, 2258:11, 2269:3, 2269:15, 2274:22, 2276:8, 2277:15, 2278:5,

2288:20, 2298:12, 2306:10, 2356:10,

2365:24

MCR's [1] - 2203:7

mean [20] - 2173:6, 2212:23, 2223:15,

2224:7, 2226:25, 2228:2, 2228:15,

2229:8, 2230:16, 2232:18, 2234:18, 2235:2, 2235:5, 2284:14, 2300:14,

2325:18, 2326:25, 2332:4, 2340:11,

2360:17 meaning [3] - 2216:24, 2249:11, 2275:5

meaningful [3] - 2257:20, 2258:20,

2259:25

means [9] - 2164:25, 2186:14, 2188:24,

2198:16, 2200:3, 2245:17, 2276:1,

2306:19 meant [12] - 2162:21, 2168:7, 2169:23,

2173:4, 2270:2, 2271:3, 2277:3, 2314:12, 2356:19, 2359:12, 2359:13,

2368:12 measure [1] - 2249:5

mechanic's [1] - 2194:6

mechanical [1] - 2159:25

media [1] - 2370:15 meet [7] - 2174:18, 2219:14, 2219:24,

2232:8, 2299:2, 2301:23, 2327:7

meeting [7] - 2189:17, 2240:13,

2240:14, 2281:8, 2293:14, 2298:14, 2327:16

meetings [5] - 2249:22, 2274:10,

2289:5, 2295:1, 2322:10

mails [1] - 2180:4

main [1] - 2222:8

maintain [1] - 2267:9

major [2] - 2178:15, 2288:17

malpractice [1] - 2282:16

2232:16, 2235:14, 2235:17, 2238:21,

2278:17, 2278:20, 2290:7, 2293:18,

Management [1] - 2259:12

Manhattan [1] - 2181:9

map [1] - 2318:5 March [13] - 2159:7, 2162:16, 2203:7, 2216:9, 2254:1, 2274:9, 2276:6,

2286:20, 2371:15

2258:2, 2258:10, 2258:12, 2259:1, 2276:8, 2277:15, 2278:5, 2304:5,

Marett's [1] - 2280:4

meets [1] - 2279:25 member [1] - 2351:24 Members [3] - 2161:15, 2310:7, 2348:25 members [7] - 2201:4, 2255:15, 2279:21, 2285:11, 2361:10, 2370:2 memo [3] - 2259:11, 2277:1 memorable [1] - 2197:23 memorandum [1] - 2223:1 men [6] - 2183:17, 2319:17, 2320:13, 2338:23, 2367:14, 2368:18 mention [5] - 2227:20, 2228:10, 2230:5, 2230:6, 2357:21 mentioned [6] - 2185:12, 2234:2, 2312:21, 2314:17, 2357:22, 2361:17 mere [2] - 2283:10, 2283:11 merit [1] - 2232:1 mess [2] - 2281:12, 2303:21 message [1] - 2351:20 messages [3] - 2199:5, 2351:10, 2351:12 messy [2] - 2286:22, 2298:4 met [7] - 2222:11, 2238:14, 2239:6, 2264:13, 2291:1, 2293:19, 2298:11 method [6] - 2266:16, 2273:3, 2283:18, 2283:19, 2283:20, 2283:21 Metropolis [1] - 2187:4 MGC [1] - 2361:19 Michael [72] - 2159:21, 2160:22, 2160:24, 2162:23, 2163:12, 2178:25, 2180:24, 2181:2, 2188:6, 2202:8, 2202:16, 2204:20, 2205:24, 2206:10, 2206:18, 2208:17, 2208:21, 2208:23, 2209:9, 2210:17, 2211:18, 2211:25, 2213:5, 2213:19, 2214:7, 2222:4, 2222:7, 2222:11, 2222:12, 2223:19, 2223:22, 2223:23, 2224:7, 2224:9, 2224:15, 2224:22, 2225:25, 2226:10, 2227:15, 2227:17, 2228:10, 2229:4, 2229:6, 2229:9, 2229:16, 2229:18, 2230:12, 2230:13, 2231:9, 2234:3, 2234:13, 2234:19, 2234:22, 2235:1, 2235:24, 2238:1, 2240:14, 2247:10, 2310:23, 2312:9, 2318:23, 2319:11, 2321:24, 2322:11, 2325:4, 2334:12, 2355:11, 2357:11, 2358:23, 2362:3, 2363:10 MICHAEL [1] - 2159:7 Michael's [1] - 2273:17 microeconomics [1] - 2297:17 middle [4] - 2200:22, 2219:18, 2294:1, 2366:13 might [16] - 2173:2, 2212:3, 2229:5, 2232:8, 2232:23, 2234:4, 2272:12, 2284:22, 2290:9, 2305:4, 2314:9, 2335:12, 2341:24, 2342:3, 2343:17, 2360:13 Mike [39] - 2205:16, 2205:18, 2206:7, 2208:4, 2208:5, 2208:12, 2209:14, 2210:2, 2210:4, 2211:9, 2211:20,

2212:2, 2212:21, 2213:12, 2213:13,

2214:8, 2216:8, 2252:17, 2260:9,

2269:21, 2269:25, 2281:25, 2282:1, 2287:18, 2290:4, 2290:22, 2338:21, 2339:8, 2339:11, 2339:19, 2339:20, 2339:25, 2340:3, 2340:4, 2340:10, 2340:20, 2341:9, 2341:12 mike [1] - 2206:6 Mike's [1] - 2280:3 milk [1] - 2173:14 million [27] - 2162:11, 2166:22, 2168:11, 2168:17, 2178:4, 2178:14, 2179:6, 2189:4, 2212:20, 2219:9, 2227:2, 2253:2, 2294:19, 2295:23, 2296:1, 2296:21, 2296:22, 2298:5, 2330:22, 2335:2, 2335:3, 2335:15, 2335:16, 2335:17, 2336:3 millionaire [1] - 2246:24 millions [13] - 2165:7, 2213:1, 2217:23, 2220:4, 2226:19, 2226:21, 2226:23, 2226:24, 2232:9, 2272:8 Mills [1] - 2274:11 mind [15] - 2174:8, 2176:24, 2241:21, 2254:8, 2254:9, 2264:15, 2268:13, 2270:2, 2284:16, 2288:10, 2304:15, 2344:19, 2362:18 mine [1] - 2213:17 minority [2] - 2280:1, 2280:2 minute [8] - 2177:17, 2178:2, 2179:14, 2180:18, 2182:2, 2264:20, 2293:4, 2369:4 minutes [19] - 2183:16, 2204:8, 2204:13, 2221:8, 2221:14, 2221:15, 2234:8, 2256:3, 2256:4, 2285:21, 2339:23, 2340:4, 2348:20, 2348:21, 2348:22, 2360:11, 2360:12, 2361:11 misappropriated [1] - 2268:14 mischaracterization [1] - 2183:24 mischaracterizing [1] - 2183:18 misconstrued [1] - 2318:9 mislead [2] - 2292:2, 2301:20 misquoted [1] - 2243:15 misrepresented [1] - 2313:24 missing [4] - 2235:25, 2305:17, 2325:25, 2350:21 misspelled [1] - 2211:4 misspoken [1] - 2302:25 mistake [2] - 2227:18, 2325:11 misunderstanding [1] - 2345:11 Mob [1] - 2301:5 mode [2] - 2242:2 moment [12] - 2177:1, 2181:17, 2191:14, 2236:24, 2247:24, 2262:8, 2262:24, 2282:2, 2309:2, 2360:25, 2365:15, 2365:16 momentous [1] - 2252:9 Monday [7] - 2259:8, 2263:16, 2264:12, 2370:7, 2370:12, 2370:17, 2371:15

2172:20, 2172:21, 2172:22, 2172:23, 2177:10, 2177:12, 2177:14, 2177:16, 2177:19, 2179:2, 2179:5, 2180:1, 2184:17, 2185:25, 2186:2, 2186:24, 2187:21, 2188:9, 2188:10, 2189:9, 2189:11, 2191:3, 2193:20, 2193:24, 2194:10, 2194:18, 2195:10, 2195:20, 2195:22, 2199:1, 2199:4, 2199:22, 2199:24, 2200:3, 2202:13, 2203:14, 2203:18, 2203:21, 2203:24, 2214:18, 2215:8, 2215:11, 2215:25, 2216:15, 2216:16, 2217:1, 2219:22, 2223:7, 2223:17, 2226:11, 2226:15, 2226:16, 2227:6, 2227:11, 2229:3, 2229:20, 2230:1, 2232:20, 2236:15, 2236:19, 2238:4, 2238:8, 2238:9, 2238:10, 2238:11, 2239:12, 2241:16, 2241:17, 2241:18, 2242:8, 2242:11, 2242:18, 2242:20, 2245:16, 2247:6, 2247:17, 2252:18, 2252:21, 2253:16, 2253:23, 2254:9, 2255:12, 2258:11, 2259:19, 2261:9, 2261:24, 2262:16, 2262:19, 2262:25, 2263:1, 2263:2, 2263:7, 2263:8, 2263:11, 2267:18, 2267:19, 2267:22, 2268:6, 2268:9, 2268:11, 2268:14, 2268:15, 2268:17, 2272:8, 2272:10, 2272:25, 2273:3, 2273:4, 2275:12, 2277:14, 2277:19, 2277:21, 2277:24, 2278:2, 2278:4, 2282:10, 2285:2, 2289:10, 2291:17, 2295:10, 2295:13, 2296:10, 2296:18, 2296:23, 2296:24, 2297:1, 2297:14, 2299:1, 2299:6, 2304:21, 2305:5, 2305:6, 2317:24, 2318:3, 2318:8, 2318:13, 2318:18, 2319:11, 2319:19, 2319:20, 2319:21, 2319:24, 2320:8, 2320:9, 2320:11, 2320:14, 2320:18, 2320:19, 2326:9, 2327:22, 2327:23, 2327:25, 2328:1, 2328:12, 2328:13, 2328:14, 2328:15, 2333:13, 2336:12, 2337:5, 2337:9, 2337:19, 2338:11, 2339:1, 2339:25, 2344:24, 2345:2, 2349:8, 2349:10, 2349:19, 2350:6, 2353:1, 2353:2, 2353:3, 2353:5, 2354:9, 2354:22, 2355:21, 2356:12, 2356:15, 2357:6, 2358:3, 2358:7, 2358:8, 2358:11, 2358:19, 2359:5, 2359:10, 2359:14, 2362:8, 2362:10, 2362:13, 2362:15, 2362:21, 2363:5, 2363:14, 2363:17, 2363:18, 2364:14, 2364:16, 2364:20, 2364:21, 2365:5, 2365:9, 2367:16, 2368:6, 2368:13, 2368:16 month [6] - 2193:13, 2228:13, 2258:7, 2258:8, 2258:21, 2277:3 months [8] - 2193:7, 2193:11, 2225:19, 2228:3, 2228:6, 2259:22, 2269:5, 2349:13 moreover [1] - 2267:16 Morgan [1] - 2176:4 morning [12] - 2160:8, 2160:14, 2160:18, 2161:12, 2161:13, 2161:16, 2161:22, 2161:23, 2200:16, 2264:2,

money [241] - 2161:9, 2162:3, 2162:4,

2162:5, 2162:24, 2168:4, 2168:7,

2172:1, 2172:4, 2172:8, 2172:19,

2169:11, 2169:19, 2169:22, 2169:23,

2169:24, 2170:4, 2171:13, 2171:19,

2370:7, 2370:12

mortgage [4] - 2259:19, 2297:2, 2297:3, 2297:7

mortgages [3] - 2259:11, 2320:6, 2320:15

most [10] - 2189:23, 2224:19, 2227:25, 2235:10, 2237:7, 2253:8, 2260:3, 2270:24, 2284:18, 2337:2

mother [3] - 2280:4, 2291:20

mother's [1] - 2280:5

motherfuckers [2] - 2186:9, 2186:10

motion [2] - 2316:15, 2316:17

motive [17] - 2178:3, 2178:11, 2178:17, 2184:23, 2188:24, 2188:25, 2198:4, 2224:12, 2232:19, 2246:15, 2246:16, 2248:16, 2250:17, 2292:2, 2330:14, 2331:25

motives [2] - 2198:3, 2253:7 Mountain [1] - 2326:6

move [9] - 2180:24, 2233:14, 2238:23, 2251:21, 2296:6, 2360:10, 2368:4, 2370:4

moved [14] - 2181:2, 2206:10, 2206:14, 2211:22, 2212:2, 2212:8, 2291:7, 2291:9, 2291:13, 2291:14, 2291:15, 2292:3, 2308:24

movie [1] - 2204:9

moving [3] - 2188:10, 2223:17, 2303:25

mucked [1] - 2334:21

muddy [3] - 2166:18, 2287:2, 2287:3 multi [3] - 2162:11, 2168:17, 2246:24

multi-million [2] - 2162:11, 2168:17

multimillion [1] - 2367:18

multiple [4] - 2168:12, 2238:19,

2315:15, 2317:24

multiply [1] - 2335:10

multiplying [1] - 2335:18

murder [1] - 2162:2

Muslims [2] - 2302:24, 2352:8

must [14] - 2244:25, 2245:6, 2245:15, 2249:12, 2249:16, 2249:17, 2249:18, 2254:20, 2255:5, 2266:10, 2269:2,

2278:10, 2304:5

mysterious [1] - 2298:15

mystery [2] - 2275:16, 2324:22

mythical [1] - 2302:16

Ν

nail [1] - 2239:17 nails [1] - 2279:3

name [23] - 2179:17, 2196:9, 2210:9, 2210:12, 2211:4, 2224:2, 2235:14, 2276:18, 2288:5, 2329:15, 2329:16, 2329:17, 2329:21, 2329:23, 2330:5, 2331:13, 2331:14, 2331:23, 2332:3,

2339:24, 2340:8

named [11] - 2168:2, 2220:10, 2247:1, 2247:5, 2247:10, 2248:14, 2261:17, 2261:18, 2329:18, 2330:16, 2332:8

names [6] - 2280:3, 2294:24, 2330:7, 2330:17, 2331:7, 2331:22

Nassau [4] - 2279:10, 2343:15, 2343:16, 2343:20

nature [4] - 2270:6, 2316:17, 2331:9, 2343:9

Naushan [2] - 2159:22, 2160:13 near [2] - 2274:16, 2291:18

necessarily [4] - 2168:15, 2291:5, 2313:7, 2336:1

necessary [1] - 2235:22

2371:3, 2371:10

need [41] - 2169:7, 2170:8, 2179:5, 2179:8, 2179:20, 2180:25, 2187:1, 2200:19, 2208:10, 2209:25, 2211:23, 2212:10, 2213:20, 2216:23, 2223:11, 2224:22, 2229:14, 2256:4, 2258:19, 2274:14, 2289:9, 2290:1, 2290:2, 2290:18, 2291:3, 2301:10, 2304:4, 2305:15, 2305:18, 2308:1, 2308:20, 2308:21, 2309:3, 2338:23, 2342:24,

needed [11] - 2167:7, 2179:2, 2216:6, 2221:7, 2223:16, 2227:4, 2232:3, 2232:11, 2276:23, 2289:13, 2309:7

2359:11, 2360:4, 2360:23, 2361:2,

needs [5] - 2204:24, 2216:22, 2329:15, 2359:5, 2363:25

negative [3] - 2296:11, 2296:12, 2344:23

neglected [2] - 2274:6, 2277:5 negotiate [2] - 2232:13, 2328:17 negotiating [2] - 2227:11, 2296:17

negotiation [1] - 2279:24

neighborhood [5] - 2185:16, 2185:17, 2185:18, 2185:22, 2192:20

neighborhoods [2] - 2185:20, 2287:12 neighbors [2] - 2185:20, 2343:21

NEP [4] - 2260:5, 2290:20, 2293:25, 2295:22

nervous [4] - 2179:18, 2205:20, 2242:11, 2277:20

nest [2] - 2188:4, 2353:7

net [5] - 2261:4, 2261:5, 2295:23,

2296:11, 2296:12 neutral [1] - 2241:25

neutrally [1] - 2308:22

never [41] - 2163:17, 2169:23, 2174:12, 2177:24, 2177:25, 2179:10, 2180:4, 2191:18, 2195:25, 2201:15, 2212:1, 2224:24, 2224:25, 2226:1, 2234:2, 2241:21, 2249:5, 2254:8, 2254:9, 2264:13, 2267:20, 2267:21, 2267:22, 2269:21, 2279:8, 2280:24, 2281:2, 2281:5, 2282:17, 2293:9, 2300:3, 2312:23, 2313:6, 2318:16, 2319:20, 2346:20, 2348:14, 2359:12

NEW [1] - 2159:1

new [6] - 2225:21, 2225:22, 2242:18, 2272:20, 2275:24, 2308:5

New [24] - 2159:5, 2159:14, 2159:15, 2160:6, 2164:20, 2193:18, 2193:24, 2195:2, 2195:8, 2199:17, 2199:19, 2199:21, 2272:10, 2279:11, 2297:5, 2297:12, 2297:23, 2314:13, 2337:6, 2337:9, 2343:18, 2345:16, 2346:8, 2354:11

newspaper [1] - 2370:15

next [24] - 2168:25, 2169:13, 2171:14, 2186:21, 2187:17, 2188:19, 2192:24, 2202:23, 2207:3, 2228:20, 2250:24, 2256:10, 2285:23, 2294:20, 2296:13, 2299:4, 2299:6, 2299:9, 2328:17, 2333:19, 2345:20, 2347:25, 2366:20, 2369:23

nice [5] - 2168:22, 2187:7, 2187:11, 2224:1, 2326:25

NICHOLAS [1] - 2159:21

Nicholas [1] - 2160:23

night [6] - 2190:14, 2236:25, 2264:25,

2370:7, 2370:24, 2370:25

NINA [3] - 2159:10, 2160:2, 2257:3

Nina [1] - 2160:7

nine [9] - 2225:19, 2228:3, 2247:22, 2258:7, 2258:8, 2258:21, 2259:21, 2297:8, 2306:9

nine-month [3] - 2258:7, 2258:8, 2258:21

nitty [1] - 2178:22

nitty-gritty [1] - 2178:22

nobody [7] - 2183:5, 2183:7, 2272:24, 2305:1, 2306:22, 2306:23, 2306:24

nobody's [1] - 2173:13 nominate [1] - 2344:9 non [2] - 2219:3, 2341:11

non-HPD [1] - 2219:3 non-legal [1] - 2341:11

none [9] - 2177:21, 2178:19, 2223:5, 2223:10, 2245:8, 2268:13, 2268:14, 2269:24, 2315:9

nonetheless [1] - 2216:2

nonrefundable [3] - 2253:13, 2253:15, 2253:22

not-for-profit [2] - 2300:14

notably [1] - 2189:18

note [5] - 2248:10, 2253:25, 2276:17, 2309:8, 2309:16

notes [1] - 2201:8

nothing [29] - 2170:3, 2180:13, 2180:20, 2206:21, 2210:20, 2223:7, 2225:8,

2225:9, 2225:25, 2229:5, 2229:16,

2234:13, 2234:18, 2240:14, 2265:8, 2265:14, 2268:22, 2275:10, 2275:12,

2290:1, 2290:3, 2290:5, 2290:10, 2290:13, 2303:12, 2317:16, 2328:7,

2331:17, 2368:12

nothing's [1] - 2356:8

notice [4] - 2174:22, 2185:15, 2345:15, 2366:3

notify [1] - 2243:25

notwithstanding [2] - 2267:19, 2282:19 November [10] - 2228:7, 2230:6, 2238:14, 2239:6, 2240:12, 2243:5,

2244:7, 2244:12, 2246:14, 2249:4 nuances [1] - 2263:17 Number [1] - 2309:9 number [30] - 2180:23, 2187:3, 2208:14, 2209:19, 2209:20, 2209:21, 2221:12, 2246:12, 2246:16, 2260:25, 2276:12, 2277:22, 2297:19, 2305:24, 2307:1, 2310:21, 2317:25, 2321:23, 2330:7, 2335:4, 2335:10, 2335:14, 2335:18, 2349:14, 2353:18, 2363:12, 2363:15, 2366:11, 2366:14 numbered [2] - 2269:12, 2276:10 numbers [11] - 2187:7, 2187:11, 2232:6, 2252:4, 2276:9, 2276:15, 2292:9, 2298:13, 2307:24, 2307:25, 2327:16 numerous [11] - 2277:4, 2315:4, 2320:5, 2320:7, 2320:14, 2328:3, 2329:7, 2353:24, 2353:25, 2358:2 nuts [1] - 2300:14 nutshell [1] - 2226:12 **NY** [1] - 2159:24 О o'clock [5] - 2255:18, 2295:11, 2348:19, 2370:21, 2371:16 oath [3] - 2191:22, 2277:20, 2308:6 object [3] - 2183:9, 2183:23, 2358:25 objected [1] - 2272:19 objection [10] - 2184:7, 2233:12, 2300:19, 2301:7, 2315:22, 2344:12, 2344:13, 2359:16, 2360:17, 2368:2 objections [1] - 2359:21 objective [1] - 2324:8 objectively [1] - 2251:12 objectives [1] - 2348:17 obligated [2] - 2309:14, 2332:18 obligation [5] - 2182:5, 2191:21, 2194:25, 2267:20, 2267:21 observation [1] - 2267:24 obtain [4] - 2240:23, 2247:10, 2249:5, 2249:10 obtained [1] - 2274:17 obtaining [1] - 2247:2 obvious [1] - 2234:10 obviously [10] - 2220:4, 2237:2, 2266:22, 2313:2, 2313:18, 2316:2, 2332:16, 2351:9, 2363:12 occasion [1] - 2239:7 occasions [4] - 2233:25, 2289:25, 2320:14, 2321:24 occur[1] - 2265:6 occurred [6] - 2187:23, 2268:19, 2286:1, 2320:17, 2360:7, 2370:23 occurs [1] - 2263:15 October [3] - 2284:20, 2315:18, 2325:23

Odd [1] - 2259:12

2241:10, 2262:11

odds [5] - 2238:21, 2241:7, 2241:9,

OF [3] - 2159:1, 2159:3, 2159:10

offenses [2] - 2271:14, 2271:15 2336:24, 2337:22, 2340:13, 2340:20, 2340:22, 2340:23, 2340:24, 2340:25, offensive [2] - 2262:14, 2262:15 2343:8, 2344:8, 2345:10, 2349:7, offer [1] - 2286:22 2349:11, 2353:17, 2357:24, 2362:9, offered [5] - 2217:6, 2239:9, 2259:2, 2362:12, 2364:10, 2365:13, 2365:17, 2274:2, 2287:17 2368:10, 2369:3 offering [1] - 2263:9 one-year [1] - 2262:13 office [17] - 2181:24, 2205:6, 2206:14, ones [7] - 2192:15, 2248:7, 2253:7, 2210:10, 2249:11, 2295:9, 2300:15, 2266:4, 2313:3, 2340:21, 2357:19 2303:12, 2316:12, 2316:15, 2316:21, open [7] - 2160:1, 2184:8, 2221:20, 2317:2, 2317:3, 2317:4, 2331:16, 2257:2, 2292:13, 2310:6, 2361:7 2338:17, 2340:4 opened [3] - 2222:7, 2234:22, 2306:10 Office [3] - 2249:11, 2287:9, 2299:2 office's [1] - 2316:24 opening [7] - 2202:13, 2241:3, 2241:23, 2281:20, 2304:13, 2343:7, 2356:14 officer [1] - 2175:19 operate [2] - 2244:10, 2244:14 offices [2] - 2160:16, 2321:23 operating [8] - 2215:15, 2215:16, official [5] - 2178:7, 2188:25, 2189:2, 2215:20, 2216:1, 2216:19, 2217:4, 2247:10, 2288:25 2244:8, 2244:13 officials [4] - 2239:5, 2246:24, 2247:20, opinion [8] - 2175:16, 2311:6, 2334:4, 2310:21 2345:14, 2346:15, 2346:16, 2355:6, often [1] - 2235:16 2355:24 old [2] - 2206:20 once [17] - 2163:16, 2176:7, 2181:10, opinions [1] - 2311:3 2189:22, 2190:4, 2191:4, 2214:15, opportunity [5] - 2251:11, 2273:25, 2274:17, 2319:23, 2339:14 2235:12, 2285:8, 2297:18, 2320:9, opposed [1] - 2330:14 2320:19, 2334:5, 2346:19, 2350:7, opposite [2] - 2203:20, 2273:20 2358:3, 2363:1 order [14] - 2168:4, 2181:12, 2200:14, one [184] - 2161:8, 2163:3, 2163:11, 2200:15, 2216:7, 2244:23, 2245:5, 2165:17, 2166:15, 2167:4, 2168:6, 2245:13, 2247:4, 2249:8, 2249:9, 2168:9, 2169:5, 2170:13, 2171:11, 2250:6, 2282:10, 2283:21 2171:15, 2173:2, 2173:4, 2173:7, Order [1] - 2337:7 2180:16, 2180:23, 2183:14, 2183:18, ordinary [1] - 2233:5 2184:12, 2186:22, 2187:20, 2188:11, organization [5] - 2164:16, 2164:25, 2189:4, 2190:5, 2190:12, 2194:1, 2279:5, 2344:2, 2352:24 2194:4, 2196:10, 2196:13, 2201:12, 2201:14, 2202:6, 2202:11, 2202:23, Organizations [1] - 2164:14 2203:18, 2209:23, 2209:24, 2210:2, organizations [1] - 2164:15 2210:17, 2210:18, 2210:19, 2210:20, organized [2] - 2271:8, 2271:14 2214:22, 2215:23, 2217:12, 2218:24, original [11] - 2166:9, 2166:15, 2166:23, 2219:14, 2220:21, 2223:8, 2226:15, 2169:24, 2240:19, 2265:2, 2265:4, 2227:12, 2227:20, 2227:21, 2230:9, 2266:25, 2318:14, 2356:9, 2360:17 2230:15, 2230:21, 2231:18, 2231:22, originally [1] - 2347:3 2232:16, 2232:25, 2233:17, 2234:5, otherwise [7] - 2220:23, 2224:1, 2234:11, 2236:13, 2236:22, 2242:17, 2249:14, 2316:14, 2316:20, 2316:23, 2246:10, 2250:1, 2250:14, 2251:22, 2350:19 2252:2, 2252:21, 2253:25, 2254:2, ought [1] - 2276:4 2254:4, 2254:13, 2254:14, 2254:25, outrage [5] - 2287:10, 2289:2, 2308:9, 2258:16, 2259:22, 2262:13, 2262:17, 2343:5 2262:18, 2263:18, 2263:20, 2263:24, outraged [6] - 2287:10, 2287:11, 2264:12, 2264:13, 2266:9, 2266:10, 2287:12, 2287:17, 2287:20 2268:24, 2271:10, 2275:13, 2276:11, outrageous [1] - 2287:25 2276:12, 2277:7, 2277:17, 2277:18, outside [5] - 2221:20, 2255:17, 2269:8, 2277:22, 2278:7, 2279:10, 2284:11, 2305:20, 2361:7 2290:22, 2290:23, 2293:3, 2294:2, outsider [1] - 2283:23 2294:7, 2294:10, 2294:18, 2294:20, outstanding [1] - 2264:11 2294:22, 2294:23, 2296:1, 2296:2, overcome [2] - 2198:10, 2235:23 2296:7, 2300:16, 2301:17, 2306:16, overlooked [1] - 2242:2 2307:17, 2307:18, 2311:7, 2312:10, overruled [2] - 2184:7, 2360:17 2314:17, 2315:12, 2318:25, 2319:14, overrun [1] - 2297:20 2320:23, 2321:1, 2321:6, 2321:8, oversaw [1] - 2332:5 2322:19, 2323:4, 2323:14, 2324:1, oversight [1] - 2260:6 2325:7, 2329:18, 2330:2, 2330:11, overtime [1] - 2346:4 2331:4, 2332:7, 2335:10, 2336:19,

overwhelming [2] - 2166:6, 2199:12 overwhelmingly [2] - 2353:9, 2368:17 **owe** [3] - 2267:21, 2289:11, 2295:10 owed [12] - 2170:6, 2185:13, 2194:18, 2229:3, 2229:20, 2241:16, 2296:10, 2320:17, 2337:7, 2337:13, 2338:9, 2338:11

owes [2] - 2199:4, 2226:11 owing [1] - 2195:6

2261:21, 2263:1, 2280:3

own [24] - 2167:9, 2179:17, 2186:23, 2192:17, 2194:23, 2196:24, 2219:4, 2222:22, 2224:20, 2224:21, 2242:25, 2248:20, 2250:19, 2257:25, 2272:15, 2287:12, 2290:18, 2291:5, 2298:1, 2306:6, 2308:4, 2344:8, 2361:18 owned [6] - 2248:5, 2253:1, 2261:16,

Ρ

pablum [1] - 2255:3 packet [1] - 2168:22

pad [6] - 2167:21, 2168:9, 2185:6, 2201:14, 2292:20, 2313:13 padded [5] - 2168:12, 2184:12,

2292:20, 2297:24, 2303:24 padding [5] - 2166:10, 2166:23, 2169:24, 2184:21, 2184:25

PAGE [1] - 2372:2

page [30] - 2182:8, 2207:3, 2228:20, 2239:21, 2250:24, 2251:20, 2256:10, 2264:8, 2264:10, 2264:12, 2264:16, 2267:20, 2271:17, 2275:13, 2285:23, 2299:9, 2306:9, 2311:11, 2314:22, 2324:7, 2333:19, 2345:20, 2350:18, 2354:25, 2361:19, 2365:19, 2366:13, 2366:14, 2366:20

pages [5] - 2188:8, 2193:3, 2231:19, 2325:1, 2326:2

paid [79] - 2166:2, 2169:23, 2178:15, 2180:7, 2183:8, 2186:7, 2186:8, 2190:3, 2190:7, 2194:5, 2194:21, 2195:9, 2196:1, 2202:21, 2203:9, 2203:16, 2203:21, 2210:11, 2211:1, 2215:11, 2216:1, 2216:5, 2216:9, 2217:4, 2218:1, 2218:2, 2222:22, 2222:23, 2223:8, 2224:6, 2226:18, 2226:19, 2226:21, 2226:24, 2228:4, 2233:4, 2233:8, 2234:10, 2239:5, 2239:12, 2247:2, 2254:9, 2258:9, 2258:10, 2267:1, 2267:18, 2267:19, 2272:8, 2277:3, 2277:5, 2292:20, 2296:8, 2296:10, 2297:3, 2304:21, 2304:22, 2313:11, 2318:15, 2321:11, 2328:14, 2331:22, 2337:5, 2337:6, 2342:2, 2353:1, 2359:13, 2363:23, 2364:19, 2365:8, 2367:22, 2368:18,

pains [1] - 2253:25 Painting [1] - 2252:25 Panama [2] - 2227:7, 2311:12

2368:23, 2368:24, 2369:24

Panamanian [3] - 2227:9, 2227:12, 2232:14

paper [9] - 2247:13, 2250:13, 2292:15, 2293:6, 2309:18, 2324:14, 2324:15, 2325:15, 2365:4

paperwork [2] - 2196:10, 2247:13

parade [1] - 2343:17 Paralegal [1] - 2159:22 Park [1] - 2181:9 parking [1] - 2216:15

parlor [1] - 2181:12

part [31] - 2201:16, 2202:9, 2202:12, 2211:15, 2223:13, 2225:6, 2229:20, 2234:21, 2241:16, 2248:19, 2254:15, 2261:11, 2301:11, 2303:10, 2314:2, 2317:7, 2324:10, 2324:12, 2327:2, 2339:3, 2351:24, 2352:2, 2353:3, 2356:12, 2357:16, 2362:8, 2363:1, 2363:14, 2364:3, 2364:6

participants [1] - 2258:15 participate [3] - 2165:12, 2282:14, 2282:20

participated [1] - 2294:5 participating [1] - 2314:11 participation [2] - 2337:4, 2353:10

particular [5] - 2241:13, 2324:6, 2336:25, 2364:18

particularly [2] - 2167:3, 2277:19

parties [1] - 2165:1

partner [14] - 2163:12, 2173:4, 2173:8, 2176:2, 2201:23, 2201:24, 2202:5, 2202:6, 2202:7, 2202:15, 2226:20, 2248:5, 2268:10

partners [3] - 2173:2, 2281:25

partners' [1] - 2163:14

parts [1] - 2305:17

party [1] - 2296:25

Pascal [4] - 2168:2, 2168:4, 2261:17, 2261:21

pass [1] - 2328:17

passed [4] - 2280:4, 2350:6, 2351:20, 2359:7

past [3] - 2225:11, 2232:17, 2234:8

paste [2] - 2339:24, 2340:8

path [1] - 2297:10 patience [1] - 2166:6

patients [1] - 2200:8

pause [5] - 2177:17, 2177:20, 2242:13,

2242:14, 2242:19

pay [71] - 2167:6, 2167:7, 2167:8, 2172:3, 2172:8, 2172:15, 2172:19, 2172:21, 2177:9, 2177:11, 2179:2, 2179:7, 2179:8, 2180:6, 2180:10, 2180:12, 2186:25, 2191:3, 2193:20, 2193:22, 2194:8, 2195:20, 2195:22, 2202:22, 2202:23, 2202:24, 2203:19, 2216:3, 2217:25, 2219:21, 2219:25, 2220:7, 2226:11, 2226:15, 2226:16, 2226:22, 2229:3, 2229:20, 2230:7, 2230:17, 2230:18, 2232:21, 2245:1, 2245:10, 2247:14, 2248:25, 2249:1,

2263:25, 2274:22, 2288:23, 2292:24, 2292:25. 2304:6. 2313:9. 2313:14. 2314:2, 2318:12, 2318:13, 2321:21, 2326:9, 2328:16, 2329:12, 2333:17, 2333:18, 2342:13, 2362:7, 2362:12, 2362:16, 2363:4

payable [1] - 2275:19

paying [31] - 2162:13, 2168:16, 2170:17, 2170:22, 2174:1, 2177:19, 2178:4, 2178:18, 2180:9, 2186:2, 2190:13, 2195:16, 2218:8, 2224:13, 2229:23, 2239:1, 2262:16, 2269:15, 2278:1, 2295:24, 2314:5, 2315:7, 2338:11, 2362:7, 2362:21, 2362:23, 2364:16, 2364:17, 2365:5, 2365:8

payment [36] - 2169:25, 2170:21, 2171:15, 2171:24, 2181:1, 2185:14, 2193:5, 2195:25, 2245:3, 2245:8, 2250:8, 2252:2, 2258:11, 2258:12, 2264:19, 2269:24, 2272:24, 2276:4, 2276:25, 2277:3, 2277:9, 2282:8, 2282:15, 2283:23, 2318:19, 2319:7, 2320:20, 2324:11, 2328:8, 2337:24, 2341:6, 2341:8, 2349:17, 2359:13, 2363:3, 2363:8

payments [60] - 2165:25, 2169:9, 2169:13, 2169:18, 2170:2, 2170:8, 2170:12, 2170:15, 2171:4, 2173:11, 2173:16, 2173:22, 2173:25, 2174:12, 2174:16, 2176:1, 2178:9, 2183:5, 2186:17, 2187:12, 2188:2, 2188:3, 2188:5, 2188:13, 2195:5, 2195:7, 2203:7, 2216:18, 2239:16, 2239:18, 2240:4, 2240:6, 2241:13, 2241:19, 2241:20, 2245:16, 2258:9, 2258:25, 2264:11, 2264:23, 2265:11, 2269:3, 2273:12, 2273:21, 2280:25, 2281:11, 2318:5, 2318:6, 2318:8, 2319:5, 2319:12, 2320:6, 2320:8, 2336:20, 2356:10, 2357:19, 2357:20, 2358:2, 2358:6, 2358:14

payoff [1] - 2227:25 payroll [2] - 2247:8, 2304:7 pays [5] - 2172:1, 2203:13, 2220:1, 2231:23, 2232:1

peer [1] - 2304:23

penny [8] - 2163:14, 2167:6, 2173:14, 2179:3, 2180:7, 2227:12, 2242:4,

pension [3] - 2188:4, 2268:2, 2272:25 people [73] - 2167:14, 2168:14, 2174:13, 2178:10, 2186:6, 2186:12, 2198:15, 2199:2, 2199:20, 2204:17, 2204:22, 2205:9, 2217:17, 2219:24, 2223:17, 2230:23, 2230:25, 2231:5, 2232:18, 2233:5, 2244:1, 2264:1, 2269:11, 2276:24, 2279:16, 2283:11, 2284:6, 2287:8, 2287:10, 2287:11, 2287:12, 2287:22, 2287:23, 2288:8, 2289:12, 2289:18, 2291:18, 2291:22, 2293:2, 2294:6, 2294:14, 2295:10, 2296:2, 2296:3, 2296:5, 2296:16,

2297:14, 2300:25, 2308:17, 2314:8, piece [9] - 2183:23, 2186:23, 2230:21, popped [1] - 2210:13 2314:13, 2319:4, 2322:6, 2322:8, 2250:13, 2280:3, 2300:5, 2307:25, porous [1] - 2278:19 2322:22, 2329:7, 2329:16, 2329:17, 2309:18, 2330:11 portion [5] - 2214:25, 2247:6, 2280:5, 2329:18, 2330:6, 2330:8, 2330:21, piggish [2] - 2333:15, 2333:16 2328:11, 2365:20 2330:24, 2331:13, 2331:22, 2331:23, pills [1] - 2203:13 portrays [1] - 2260:13 2342:17, 2343:21, 2343:22, 2346:10, **Pinckney** [1] - 2261:18 Posa [6] - 2160:12, 2161:17, 2272:6, 2354:8, 2354:10 Pindar [1] - 2235:14 2279:13, 2325:13, 2336:25 **pepperoni** [1] - 2181:12 pinned [1] - 2348:16 POSA [18] - 2159:16, 2160:12, 2161:2, percent [25] - 2162:15, 2166:19, Pinto [1] - 2160:23 2161:8, 2161:19, 2161:21, 2161:22, 2166:21, 2166:22, 2184:13, 2197:25, **PINTO** [1] - 2159:21 2161:24, 2183:1, 2184:2, 2184:9, 2204:17, 2224:4, 2224:6, 2262:13, 2236:13, 2236:16, 2236:19, 2236:22, pittance [1] - 2232:7 2271:5, 2296:9, 2296:19, 2296:20, 2251:21, 2309:11, 2372:5 pivoted [1] - 2304:16 2296:21, 2296:22, 2335:8, 2335:9, Posa's [1] - 2272:4 pizza [1] - 2181:12 2335:12, 2335:14, 2335:15, 2335:16 position [11] - 2219:2, 2246:15, place [18] - 2189:18, 2198:6, 2199:24, percentage [4] - 2166:16, 2166:21, 2296:11, 2296:12, 2300:12, 2312:22, 2237:16, 2252:12, 2268:2, 2284:5, 2283:22, 2367:18 2312:23, 2313:5, 2313:6, 2348:11, 2284:7, 2284:9, 2309:19, 2310:21, perception [1] - 2189:9 2350:18 2323:8, 2325:19, 2326:3, 2326:6, perfect [2] - 2264:4 positive [1] - 2257:18 2326:7, 2334:9, 2353:13 perfectly [2] - 2261:2, 2272:23 places [3] - 2341:13, 2346:6, 2353:5 possessions [1] - 2368:9 **performance** [1] - 2274:1 possible [5] - 2214:23, 2217:12, plan [2] - 2183:24, 2292:23 performed [2] - 2275:11, 2364:6 2229:13, 2253:4, 2306:11 planted [1] - 2308:23 performing [1] - 2363:25 plants [1] - 2286:15 possibly [4] - 2217:13, 2353:20, perhaps [3] - 2166:20, 2174:4, 2253:10 2371:11 play [11] - 2216:3, 2216:4, 2217:25, period [10] - 2241:8, 2246:23, 2247:22, 2218:2, 2219:25, 2220:20, 2224:13, post [2] - 2186:16, 2234:14 2258:6, 2258:7, 2258:8, 2258:21, post-arrest [2] - 2186:16, 2234:14 2230:7, 2231:23, 2232:22, 2325:21 2261:16, 2325:25, 2345:10 Postal [1] - 2169:4 played [1] - 2348:9 permits [1] - 2267:13 posted [1] - 2171:16 playing [2] - 2241:14, 2342:21 permitted [1] - 2282:22 plays [4] - 2185:11, 2190:11, 2196:15, pot [1] - 2215:18 perpetrated [1] - 2297:12 2313:13 potbelly [2] - 2293:16, 2293:21 person [25] - 2197:11, 2205:1, 2213:3, Plaza [3] - 2159:14, 2159:24, 2305:16 potential [3] - 2272:12, 2273:23, 2220:13, 2226:25, 2229:19, 2229:20, 2315:16 plea [1] - 2248:23 2230:23, 2246:17, 2260:2, 2264:2, plead [2] - 2232:18, 2248:22 pound [1] - 2203:3 2279:10, 2289:15, 2299:7, 2303:6, pleading [1] - 2315:14 pounded [2] - 2191:17, 2201:11 2305:6, 2317:19, 2329:14, 2332:3, power[1] - 2279:11 pleads [1] - 2232:2 2337:22, 2337:25, 2342:10, 2342:11, Power [1] - 2254:24 pled [3] - 2232:17, 2232:19, 2233:7 2343:6 powered [1] - 2235:22 plenty [1] - 2180:11 personal [5] - 2271:6, 2329:19, 2368:8, powerful [2] - 2198:10, 2270:24 plotting [1] - 2190:23 2368:11, 2368:12 PowerPoint [4] - 2203:15, 2236:16, plugged [1] - 2202:10 persons [1] - 2291:10 2237:23, 2253:17 plus [1] - 2198:10 persuade [1] - 2301:22 PRA [1] - 2252:23 pocket [6] - 2167:9, 2172:4, 2180:9, pertaining [1] - 2259:11 practice [3] - 2208:21, 2266:5, 2266:24 2180:20, 2189:11, 2291:18 Pete [1] - 2184:23 pockets [1] - 2367:19 pre [1] - 2168:6 Peter [1] - 2297:15 pre-existing [1] - 2168:6 point [28] - 2171:11, 2172:11, 2176:19, petit [1] - 2271:14 precious [1] - 2237:7 2190:6, 2208:22, 2209:9, 2211:9, phase [1] - 2261:1 precisely [1] - 2356:18 2222:13, 2238:15, 2240:22, 2243:20, phenomena [1] - 2171:22 prejudge [1] - 2304:12 2252:9, 2266:3, 2282:17, 2284:1, philosophers [1] - 2310:16 2293:8, 2311:2, 2312:17, 2320:20, prepare [4] - 2228:3, 2276:23, 2322:18, phone [27] - 2163:22, 2174:8, 2174:14, 2335:2, 2342:6, 2352:9, 2364:9, 2341:4 2174:20, 2205:5, 2205:19, 2207:2, 2365:3, 2365:7, 2365:21, 2366:17 prepared [6] - 2179:21, 2200:18, 2213:4, 2222:16, 2238:1, 2243:11, pointed [3] - 2238:16, 2293:10, 2342:15 2230:6, 2275:23, 2341:5, 2341:17 2243:14, 2243:25, 2244:3, 2249:18, points [5] - 2237:13, 2265:17, 2281:8, prepares [1] - 2340:22 2273:18, 2281:14, 2289:4, 2289:9, 2293:1, 2367:19 preparing [3] - 2275:6, 2276:24, 2290:8, 2295:10, 2304:2, 2325:2, Points [1] - 2254:24 2340:12 2326:16, 2356:23, 2366:11, 2370:19 police [5] - 2186:6, 2302:21, 2302:22, presence [3] - 2221:20, 2283:10, 2361:7 phony [2] - 2227:3, 2247:1 2305:12, 2351:18 Present [1] - 2159:22 photo [4] - 2293:13, 2293:15, 2293:18 policing [2] - 2172:9, 2186:10 present [8] - 2182:4, 2182:5, 2183:14, **photos** [1] - 2295:3 Polish [1] - 2232:10 2203:2, 2203:3, 2258:18, 2286:5, pick [3] - 2192:14, 2332:6, 2332:7 politics [1] - 2306:25 2344:18 picked [1] - 2332:6 pool [1] - 2231:4 presentation [1] - 2236:16 picking [1] - 2174:16 poor [5] - 2192:11, 2197:17, 2291:18, presented [9] - 2193:10, 2203:1, picture [2] - 2169:8, 2229:19 2298:22, 2314:12 2248:15, 2292:2, 2308:5, 2308:21,

prosecutive [1] - 2242:2 2312:20, 2354:20, 2354:21 profit [2] - 2300:14 Preservation [3] - 2164:20, 2185:3, profitable [1] - 2247:4 prosecutor [4] - 2201:9, 2213:2, 2199:18 2233:17, 2233:20 program [10] - 2185:18, 2185:20, president [16] - 2175:22, 2176:5, prosecutors [3] - 2238:15, 2239:6, 2272:6, 2272:8, 2290:20, 2291:3, 2176:8, 2176:11, 2176:13, 2176:14, 2295:22, 2306:16, 2314:12, 2332:5 2244:4 2176:16, 2176:18, 2177:23, 2196:12, programs [3] - 2192:21, 2300:23, prospect [1] - 2248:19 2201:24, 2201:25, 2270:17, 2279:5, 2301:1 protects [1] - 2244:19 2355:3, 2355:14 progressed [1] - 2218:5 provable [1] - 2193:13 presiding [1] - 2160:7 progression [1] - 2236:19 prove [14] - 2203:9, 2206:2, 2210:14, pressure [3] - 2251:13, 2252:11, 2253:4 project [62] - 2166:11, 2185:17, 2210:15, 2212:13, 2225:2, 2231:15, presumably [1] - 2267:13 2185:22, 2185:23, 2189:4, 2189:13, 2235:6, 2238:3, 2244:25, 2245:15, presume [2] - 2243:21, 2266:12 2189:20, 2189:21, 2192:10, 2193:1, 2320:9, 2320:19, 2358:21 presumed [1] - 2244:15 2193:2, 2193:22, 2193:23, 2195:4, proven [17] - 2165:20, 2165:22, presumption [8] - 2235:21, 2235:23, 2200:2, 2212:20, 2212:22, 2215:22, 2186:19, 2187:15, 2188:15, 2188:18, 2244:8, 2244:11, 2244:13, 2244:14, 2219:1, 2224:4, 2240:12, 2242:5, 2189:15, 2199:13, 2232:1, 2234:25, 2242:6, 2247:23, 2260:6, 2261:1, 2244:16, 2278:9 2245:12, 2273:9, 2288:21, 2291:11, 2266:9, 2266:10, 2266:15, 2274:10, 2325:20, 2325:21, 2354:13 pretend [1] - 2368:22 2274:12, 2281:3, 2296:1, 2296:9, pretending [1] - 2215:1 Provenzano [2] - 2247:10, 2312:9 2297:23, 2298:6, 2304:21, 2304:22, pretext [1] - 2279:15 Provenzano's [2] - 2247:10, 2247:13 2328:17, 2336:25, 2337:25, 2349:12, pretty [3] - 2178:23, 2232:10, 2327:12 proves [3] - 2164:10, 2206:1, 2228:16 2349:16, 2349:18, 2350:3, 2350:7, prevailing [15] - 2217:16, 2218:6, provide [6] - 2246:15, 2248:16, 2265:1, 2350:10, 2350:15, 2351:6, 2355:8, 2226:21, 2232:3, 2238:17, 2247:12, 2265:3, 2354:10, 2370:18 2356:21, 2357:3, 2367:13, 2367:16, 2248:3, 2248:18, 2269:12, 2269:13, provided [9] - 2192:19, 2216:14, 2367:17, 2367:24, 2368:1, 2368:5, 2314:1, 2314:6, 2315:11, 2315:12, 2249:13, 2250:18, 2267:24, 2303:5, 2368:7, 2368:13 2330:17 2305:22, 2316:13, 2316:22 projects [26] - 2187:22, 2194:5, 2218:7, price [4] - 2168:3, 2335:2, 2342:7, provides [1] - 2180:17 2219:7, 2219:9, 2219:13, 2220:6, 2367:17 providing [2] - 2354:8, 2358:22 2248:3, 2260:4, 2260:7, 2262:7, prices [1] - 2350:25 provision [3] - 2316:11, 2366:11, 2274:15, 2281:24, 2313:16, 2323:9, primary [1] - 2261:6 2366:12 2329:10, 2329:11, 2341:23, 2349:9, primrose [1] - 2297:10 provisions [1] - 2194:13 2349:14, 2353:5, 2358:12, 2365:11, principle [1] - 2211:3 **public** [12] - 2188:25, 2189:2, 2196:19, 2368:11, 2368:25 print [2] - 2166:5, 2181:25 2239:5, 2246:24, 2247:9, 2247:19, Projects [2] - 2198:15, 2199:3 **printed** [3] - 2339:25, 2347:3, 2347:10 2269:12, 2306:8, 2306:11, 2306:15 proliferated [1] - 2269:11 private [12] - 2169:10, 2171:8, 2219:3, published [1] - 2251:23 promise [3] - 2316:3, 2317:5, 2367:23 pull [3] - 2222:24, 2223:11, 2322:23 2219:6, 2219:13, 2261:25, 2269:18, promised [1] - 2274:23 2306:14, 2306:16, 2310:22, 2320:5, pulled [1] - 2223:12 promptly [1] - 2255:18 2320:15 pulling [2] - 2212:25, 2233:10 prompts [1] - 2311:19 problem [10] - 2172:22, 2205:2, pulls [3] - 2213:1, 2305:2, 2347:20 proof [28] - 2163:23, 2171:1, 2174:6, 2218:12, 2235:18, 2235:19, 2256:5, puppet [1] - 2289:8 2191:18, 2201:11, 2201:22, 2202:17, 2303:10, 2329:8, 2341:18, 2351:20 purpose [13] - 2183:17, 2212:11, 2204:1, 2204:5, 2206:2, 2206:3, problems [1] - 2292:4 2219:5, 2220:24, 2220:25, 2232:8, 2217:10, 2224:23, 2227:16, 2229:14, proceed [2] - 2222:1, 2361:13 2272:24, 2324:6, 2341:7, 2341:12, 2235:19, 2235:20, 2235:25, 2243:5, Proceedings [1] - 2159:25 2363:6, 2363:7 2259:20, 2262:8, 2266:7, 2266:8, proceeds [2] - 2186:7, 2188:17 purposes [2] - 2241:20, 2266:9 2286:22, 2287:16, 2301:23 process [10] - 2183:18, 2184:15, purse [1] - 2193:21 propensity [2] - 2248:9, 2250:17 2218:22, 2249:1, 2272:16, 2283:16, pursuant [1] - 2316:15 properties [10] - 2168:12, 2199:23, 2293:25, 2314:16, 2350:20, 2354:7 push [1] - 2325:8 2227:9, 2227:10, 2232:14, 2262:1, proclivity [8] - 2246:11, 2246:17, pushed [4] - 2317:20, 2336:4, 2336:10, 2263:11, 2291:2, 2311:12, 2320:15 2246:21, 2248:9, 2250:17, 2251:13, 2336:15 property [7] - 2187:19, 2188:1, 2227:12, 2253:6 put [37] - 2167:16, 2168:8, 2168:22, 2261:21, 2279:25, 2280:3, 2280:7 produce [4] - 2213:18, 2239:7, 2249:17, 2185:9, 2189:19, 2194:25, 2195:1, proportion [1] - 2253:11 2250:22 2206:2, 2228:14, 2231:1, 2235:1, proposed [1] - 2343:8 produced [6] - 2159:25, 2240:3, 2235:3, 2235:5, 2235:9, 2242:18, proposing [1] - 2341:24 2240:20, 2250:8, 2250:10, 2326:14 2248:12, 2249:9, 2252:17, 2252:20, prosecute [2] - 2243:7, 2292:13 producing [1] - 2241:1 2252:22, 2261:5, 2268:9, 2275:17, prosecuted [1] - 2284:22 profession [1] - 2294:14 2278:2, 2290:19, 2297:1, 2297:19, prosecution [7] - 2201:4, 2204:14, proffer [7] - 2225:12, 2225:18, 2225:19, 2316:6, 2323:16, 2335:4, 2336:25, 2204:20, 2217:18, 2224:24, 2235:6, 2228:3, 2228:7, 2230:9, 2311:24 2339:24, 2339:25, 2348:10, 2350:1, 2292:4 proffers [7] - 2225:12, 2225:23, 2354:16, 2368:13 prosecution's [3] - 2201:6, 2201:20, 2225:24, 2227:19, 2315:14, 2327:18, putting [8] - 2171:20, 2188:4, 2200:2, 2228:19 2353:25 2236:11, 2242:8, 2242:11, 2350:20,

2352:4

Q

qualified [1] - 2346:22 qualify [2] - 2240:23, 2346:22 quality [4] - 2235:22, 2254:20, 2255:4, 2278:10 quarrel [1] - 2243:19 QUESTION [2] - 2311:14, 2311:18 questioned [2] - 2314:4, 2337:11 questioning [3] - 2208:8, 2208:9 questions [14] - 2225:25, 2226:2, 2245:20, 2246:8, 2269:14, 2271:1, 2272:11, 2279:9, 2284:17, 2302:7, 2325:14, 2336:23, 2337:4, 2347:9 quick [3] - 2273:15, 2351:8, 2365:18 Quickbooks [1] - 2239:15 quickly [3] - 2349:6, 2365:13, 2367:10 quite [2] - 2166:8, 2192:5 quote [4] - 2175:20, 2264:6, 2280:23, 2281:22 quoted [1] - 2235:16 quoting[1] - 2260:16

R

rabbi [1] - 2343:24 Rabbi [1] - 2278:24 racket [1] - 2164:22 Racketeer [1] - 2164:13 racketeering [13] - 2164:22, 2165:11, 2165:21, 2188:21, 2199:14, 2248:1, 2271:13, 2301:3, 2301:4, 2301:6, 2301:10, 2352:2, 2352:6 Racketeering [3] - 2165:14, 2165:17, 2165:23 rage [1] - 2287:11 rails [1] - 2241:24 raise [2] - 2168:23, 2264:5 raised [2] - 2289:12, 2343:4 raises [1] - 2284:13 ran [3] - 2227:22, 2296:5, 2341:21 range [3] - 2174:18, 2316:19 ranking [1] - 2178:7 rarely [1] - 2251:10 Rasheed [12] - 2193:18, 2194:23, 2195:1, 2195:2, 2195:10, 2336:21, 2337:2, 2337:9, 2337:12, 2337:14, 2337:21, 2338:2 rate [2] - 2270:1, 2271:5 rates [5] - 2262:2, 2263:3, 2263:9,

2264:10, 2296:17 rather [8] - 2193:20, 2198:11, 2226:8, 2243:18, 2261:4, 2262:15, 2276:5, 2276:9 rational [1] - 2366:18

rationale [1] - 2260:23 rationally [1] - 2196:11 rattled [1] - 2178:14

re [2] - 2260:25, 2261:11 re-applies [1] - 2260:25 re-submit [1] - 2261:11 react [2] - 2252:7, 2287:10 reaction [2] - 2163:8, 2173:24 read [9] - 2178:23, 2194:14, 2216:23, 2282:23, 2292:17, 2316:10, 2317:8, 2340:5, 2340:13 reading [1] - 2289:9 reads [1] - 2303:6 ready [5] - 2269:19, 2269:20, 2309:21, 2309:22, 2361:5

real [16] - 2167:25, 2168:1, 2175:12, 2180:12, 2194:20, 2219:6, 2219:13, 2231:5, 2235:12, 2245:25, 2259:24, 2266:2, 2275:3, 2275:4, 2279:22, 2290:23

realize [1] - 2178:22

realized [2] - 2234:25, 2276:25 really [44] - 2165:11, 2166:6, 2166:18, 2167:8, 2167:21, 2168:16, 2168:19, 2170:9, 2171:3, 2173:6, 2174:6, 2174:24, 2180:5, 2180:10, 2181:21, 2183:5, 2187:1, 2189:24, 2194:16, 2196:23, 2197:16, 2202:5, 2206:21, 2217:22, 2229:8, 2233:18, 2255:3, 2256:4, 2261:10, 2268:21, 2277:23, 2277:25, 2279:17, 2290:6, 2334:22, 2349:24, 2362:14, 2365:13, 2365:18, 2365:22, 2367:1, 2367:5, 2367:6, 2367:21

reapply [1] - 2350:23

reason [25] - 2180:2, 2184:15, 2200:5, 2242:24, 2255:4, 2260:21, 2268:4, 2282:18, 2318:19, 2324:16, 2324:17, 2330:4, 2330:9, 2330:12, 2330:14, 2333:7, 2338:1, 2338:10, 2338:15, 2338:19, 2345:13, 2350:15, 2351:4, 2358:23, 2371:3

reasonable [40] - 2164:10, 2171:1, 2171:3, 2175:10, 2178:19, 2180:21, 2186:20, 2187:16, 2191:11, 2196:3, 2196:23, 2197:1, 2197:11, 2199:15, 2203:5, 2204:1, 2204:5, 2217:10, 2224:14, 2225:3, 2228:17, 2229:14, 2235:7, 2238:3, 2244:22, 2244:25, 2245:7, 2245:12, 2254:22, 2255:6, 2273:9, 2278:11, 2278:16, 2285:9, 2291:12, 2320:24, 2322:5, 2327:20, 2339:6

reasons [5] - 2191:9, 2242:10, 2311:8, 2320:23, 2363:12

reassured [1] - 2283:23 rebuttal [6] - 2248:13, 2274:21, 2274:24, 2310:8, 2360:14, 2360:19 **REBUTTAL** [2] - 2310:10, 2372:12 receipt [2] - 2179:10, 2292:24

receive [3] - 2169:11, 2273:5, 2277:19 received [5] - 2171:17, 2216:13, 2242:4,

2242:6, 2366:5

recently [2] - 2216:8, 2265:17

recess [9] - 2200:19, 2221:4, 2221:18, 2256:9, 2285:18, 2309:3, 2309:8, 2360:4, 2371:15

Recess [3] - 2221:19, 2285:22, 2361:6

recognize [1] - 2251:25 recognized [1] - 2189:18

recollection [5] - 2225:22, 2226:9, 2266:21, 2362:4

recommend [2] - 2273:24, 2317:3

reconciled [1] - 2298:16

reconstruct [2] - 2267:13, 2267:17 record [3] - 2230:24, 2282:6, 2326:3 recorded [10] - 2159:25, 2163:22,

2172:7, 2220:23, 2289:4, 2313:3, 2324:20, 2324:21, 2348:8, 2348:12

recording [5] - 2185:11, 2190:11, 2196:13, 2196:15, 2301:24

recordings [10] - 2220:18, 2220:22, 2315:4, 2329:7, 2334:14, 2353:20, 2353:25, 2354:14, 2359:18, 2369:16

records [35] - 2188:7, 2193:3, 2208:15, 2211:8, 2211:23, 2212:2, 2212:7, 2212:9, 2213:5, 2214:14, 2214:18, 2214:20, 2237:21, 2238:25, 2249:2, 2250:19, 2258:2, 2267:7, 2267:9, 2270:12, 2270:23, 2278:3, 2295:18, 2304:2, 2304:19, 2305:21, 2314:9, 2323:10, 2323:12, 2323:16, 2324:11, 2326:7, 2334:14

red [4] - 2232:12, 2264:5, 2287:23, 2293:16

red-handed [2] - 2232:12, 2287:23 reduced [2] - 2336:15, 2366:5 reference [5] - 2185:12, 2275:2,

2280:14, 2280:21 referral [1] - 2273:24

referred [4] - 2173:1, 2253:2, 2352:8, 2370:8

referring [1] - 2361:19

refers [1] - 2266:1

refreshed [2] - 2266:22, 2312:16 refreshment [1] - 2312:16 refrigerator [1] - 2187:9

refurbished [1] - 2291:2

refuse [2] - 2288:12

regard [16] - 2233:11, 2239:13, 2260:3, 2262:23, 2263:14, 2265:16, 2266:5, 2266:6, 2266:25, 2267:23, 2272:11, 2280:6, 2281:23, 2283:16, 2367:12, 2367:13

regarding [10] - 2165:2, 2165:24, 2166:2, 2245:9, 2269:3, 2270:22, 2278:13, 2279:25, 2313:24, 2316:11 regular [4] - 2215:15, 2215:16, 2264:16,

2264:18

regularly [1] - 2247:21

rehabilitated [2] - 2296:4, 2296:6 rehabilitating [1] - 2296:2 reimbursements [1] - 2296:10 reject [2] - 2185:8, 2265:7 rejected [1] - 2349:10

relate [2] - 2171:12, 2202:15 repeatedly [4] - 2191:24, 2314:4, result [6] - 2178:10, 2253:4, 2253:6, 2314:5, 2354:18 2269:16, 2274:1, 2275:10 relates [1] - 2186:21 replace [1] - 2350:12 relating [1] - 2250:16 resurrect [1] - 2260:16 relation [1] - 2357:23 replaced [1] - 2350:12 retain [2] - 2269:18, 2340:12 relations [1] - 2315:5 reply [4] - 2183:15, 2183:21, 2263:19, retained [1] - 2270:1 relationship [11] - 2259:18, 2260:8, 2284:14 Retainer [1] - 2277:2 2262:21, 2272:13, 2324:9, 2324:13, report [2] - 2303:9, 2303:13 retainer [64] - 2163:21, 2170:4, 2170:21, 2327:10, 2329:22, 2332:8, 2352:1, reported [2] - 2216:19, 2351:17 2173:21, 2174:3, 2174:11, 2175:4, 2355:18 Reporter [1] - 2159:23 2179:20, 2179:21, 2208:7, 2209:1, relationships [1] - 2290:24 reports [1] - 2247:11 2210:2, 2210:4, 2210:18, 2212:1, relatively [1] - 2262:2 2215:9, 2217:1, 2218:18, 2218:24, represent [2] - 2272:13, 2272:18 relevance [1] - 2271:2 2218:25, 2219:5, 2228:12, 2232:5, representation [1] - 2317:5 2240:16, 2240:18, 2240:21, 2252:1, relevant [1] - 2361:22 representations [1] - 2245:9 reliable [1] - 2301:25 2252:19, 2253:13, 2263:14, 2263:21, representing [1] - 2342:10 2264:9, 2265:10, 2265:21, 2266:22, relied [1] - 2339:7 represents [1] - 2313:18 2267:18, 2273:15, 2275:8, 2275:9, relief [1] - 2249:9 reputation [5] - 2343:16, 2343:23, 2275:21, 2276:5, 2276:18, 2278:3, rely [5] - 2224:19, 2311:5, 2312:19, 2344:10, 2346:6, 2368:9 2281:5, 2281:12, 2296:18, 2303:22, 2327:6, 2339:11 request [1] - 2319:6 2328:12, 2338:14, 2339:13, 2340:7, requested [1] - 2216:8 remain [1] - 2260:18 2340:19, 2341:5, 2341:16, 2341:17, $\pmb{\text{remainder}\, \text{[2]}-2273\text{:}14,\,2274\text{:}14}\\$ requests [2] - 2289:5, 2289:6 2342:22, 2342:23, 2358:11, 2364:5, remained [1] - 2272:4 require [1] - 2197:10 2365:14, 2365:19, 2365:24 remaining [1] - 2278:15 required [5] - 2243:5, 2264:9, 2270:19, retains [3] - 2218:11, 2218:19, 2232:4 2349:17, 2357:15 remains [1] - 2244:17 retirement [1] - 2167:10 remarkable [4] - 2284:18, 2312:7, requirement [1] - 2301:16 return [4] - 2247:2, 2299:4, 2299:5, 2323:1, 2329:1 requires [2] - 2190:19, 2204:1 2370:6 remarks [2] - 2284:12, 2284:13 requisition [20] - 2166:20, 2166:24, returned [1] - 2198:23 2193:10, 2203:19, 2223:7, 2223:14, remember [79] - 2163:8, 2164:21, reveal [1] - 2314:10 2223:19, 2223:25, 2224:5, 2251:15, 2167:24, 2172:25, 2177:1, 2177:6, revealed [2] - 2310:20, 2352:25 2190:5, 2193:9, 2194:12, 2195:3, 2251:19, 2252:2, 2282:8, 2282:18, Reverend [1] - 2274:11 2196:18, 2201:8, 2202:21, 2203:2, 2303:19, 2335:7, 2335:17, 2335:18, reverse [2] - 2200:14, 2200:15 2204:14, 2204:21, 2205:6, 2205:22, 2335:19 review [5] - 2164:6, 2164:8, 2264:12, 2212:6, 2215:16, 2216:11, 2218:13, requisitions [21] - 2166:13, 2169:25. 2282:23, 2357:14 2219:25, 2220:1, 2220:8, 2222:7, 2184:12, 2222:17, 2222:18, 2222:23, reviewing [1] - 2336:7 2223:21, 2224:1, 2225:12, 2226:7, 2223:3, 2223:6, 2223:11, 2245:2, reviews [2] - 2222:20, 2248:20 2226:16, 2226:25, 2228:18, 2229:17, 2245:7, 2282:15, 2282:24, 2283:18, reward [1] - 2188:25 2233:23, 2233:24, 2250:9, 2255:16, 2306:24, 2334:18, 2335:4, 2335:5, 2265:21, 2272:22, 2275:8, 2282:3, 2335:7, 2335:11, 2350:5 RFQ [1] - 2260:10 2283:2, 2288:15, 2297:16, 2298:23, researching [1] - 2315:3 Richards [22] - 2159:22, 2160:13, 2301:25, 2304:13, 2308:18, 2318:5, 2181:10, 2196:14, 2198:18, 2215:1, residence [1] - 2261:7 2319:9, 2319:19, 2320:3, 2322:17, 2215:5, 2231:13, 2243:9, 2243:23, resold [1] - 2291:2 2257:25, 2258:23, 2266:21, 2267:2, 2323:19, 2326:20, 2329:6, 2329:13, resolve [1] - 2273:7 2275:5, 2288:19, 2305:16, 2312:3, 2331:3, 2333:15, 2334:8, 2335:6, resolving [1] - 2352:20 2335:25, 2336:6, 2337:7, 2339:18, 2324:1, 2326:15, 2348:13, 2348:16 respect [2] - 2180:11, 2301:17 2341:8, 2344:3, 2349:12, 2350:9, Richards' [1] - 2324:7 respectfully [21] - 2186:18, 2247:6, 2350:14, 2351:2, 2355:5, 2356:14, Richards's [1] - 2353:22 2253:9, 2257:20, 2258:21, 2259:4, 2359:4, 2370:9, 2370:17 **RICO** [7] - 2164:12, 2164:14, 2301:4, 2260:14, 2262:24, 2263:23, 2268:20, 2301:16, 2315:15, 2351:25 remembered [1] - 2180:6 2271:3, 2272:6, 2272:19, 2274:14, remembers [1] - 2216:12 rid [1] - 2214:15 2275:15, 2276:3, 2278:12, 2280:14, remind [3] - 2170:24, 2208:18, 2235:5 ridiculous [2] - 2226:14, 2227:19 2280:20, 2282:15, 2284:18 reminded [1] - 2204:10 rig [1] - 2293:25 respond [1] - 2310:24 reminding [1] - 2235:6 rights [1] - 2285:5 responding [1] - 2302:15 reminds [1] - 2366:19 ringy [1] - 2289:20 response [3] - 2279:19, 2347:15 removed [1] - 2176:2 ringy-ding-ding [1] - 2289:20 responsibility [2] - 2304:14, 2350:17 rendition [1] - 2241:12 Riopelle [1] - 2160:20 responsible [4] - 2200:6, 2260:5, renovated [1] - 2261:17 riot [1] - 2287:12 2283:18, 2283:20 renovation [3] - 2261:14, 2262:17,

rest [15] - 2172:8, 2172:19, 2172:21, **rip** [3] - 2181:10, 2355:19, 2357:8 ripped [7] - 2193:6, 2314:16, 2323:24, 2192:5, 2209:2, 2248:19, 2250:4, 2325:12, 2326:2, 2347:1, 2347:3 2250:18, 2252:18, 2257:17, 2274:6, 2278:2, 2328:17, 2335:7, 2363:5 ripping [1] - 2199:20 Restoration [4] - 2162:11, 2169:15, rips [1] - 2324:25 rise [11] - 2160:3, 2161:10, 2175:9, 2205:15, 2365:24

2262:19

rent[1] - 2295:24

repairs [1] - 2252:25

repeat [2] - 2272:21, 2284:10

repeated [2] - 2289:6, 2290:12

2198:20, 2221:5, 2255:19, 2257:4, 2267:25, 2274:19, 2274:20, 2274:24, 2366:8, 2366:10, 2366:11, 2366:14 seeing [1] - 2259:8 2257:8, 2284:11, 2285:20, 2360:5 2284:1, 2284:2, 2319:24, 2326:12, 2346:13 risk [2] - 2315:11, 2330:18 seek [1] - 2249:1 scam [2] - 2212:25, 2314:11 **risks** [3] - 2331:6, 2331:7, 2332:13 seeking [2] - 2240:15, 2262:10 scams [1] - 2213:2 **road** [2] - 2287:11, 2334:13 seem [4] - 2182:3, 2183:4, 2187:13, robbery [2] - 2323:2, 2323:3 scare [1] - 2197:16 2346:15 **ROBERT** [2] - 2159:17, 2159:19 scared [1] - 2197:2 segregated [1] - 2258:25 Robert [2] - 2160:17, 2160:21 scenario [1] - 2195:15 select [1] - 2305:3 robot [1] - 2177:19 scene [1] - 2283:10 selected [6] - 2272:17, 2294:3, 2296:13, rock [1] - 2346:16 scheme [18] - 2166:8, 2166:25, 2169:1, 2298:5, 2298:17, 2298:20 2169:6, 2178:21, 2179:15, 2188:16, selecting [1] - 2283:16 Rocky [2] - 2204:9, 2310:15 2202:9, 2225:6, 2238:18, 2240:15, self [3] - 2303:9, 2331:10, 2331:11 Rodney [4] - 2193:18, 2194:23, 2245:1, 2282:14, 2314:2, 2314:6, **self-help** [1] - 2303:9 2194:25, 2195:2 2315:12, 2353:2 **role** [5] - 2186:5, 2201:25, 2238:17, selflessness [3] - 2278:14, 2279:6, schemes [2] - 2196:8, 2321:8 2260:13, 2353:14 2279:7 scheming [2] - 2163:20, 2227:13 room [14] - 2244:18, 2278:8, 2310:18, sell [5] - 2168:3, 2200:2, 2230:7, schizophrenic [1] - 2291:6 2312:7, 2313:13, 2315:10, 2321:24, 2350:7, 2350:13 school [3] - 2291:16, 2292:17, 2331:24 2322:11, 2322:14, 2323:7, 2329:3, selling [1] - 2187:10 2331:6, 2348:9, 2348:10 scratch [1] - 2293:3 send [10] - 2208:16, 2209:17, 2209:18, screwed [1] - 2358:4 rope [1] - 2316:7 2211:7, 2229:25, 2267:21, 2290:10, rotation [1] - 2286:13 script [2] - 2265:24, 2289:9 2326:6, 2326:7, 2371:11 roughed [1] - 2352:16 scripted [2] - 2244:5, 2290:12 sending [3] - 2188:5, 2250:9, 2340:13 round [5] - 2261:1, 2294:1, 2294:2, scrupulous [1] - 2196:8 sends [3] - 2210:9, 2214:23, 2222:22 2294:3, 2296:13 scrutinize [2] - 2246:5, 2254:18 **Senior** [1] - 2308:19 Rouse [2] - 2300:16, 2300:17 sealed [1] - 2283:20 SENIOR [1] - 2159:11 Row [2] - 2261:14, 2297:4 search [2] - 2241:25, 2257:20 sense [26] - 2178:19, 2182:1, 2194:2, rules [4] - 2215:5, 2233:17, 2267:3, searching [1] - 2245:22 2195:8, 2202:22, 2212:16, 2220:23, 2270:22 2230:3, 2230:4, 2230:22, 2231:5, seasons [1] - 2286:13 run [7] - 2199:2, 2214:16, 2226:20, seat [1] - 2205:1 2231:10, 2242:13, 2243:21, 2245:25, 2226:24, 2298:24, 2300:13, 2355:8 seated [5] - 2160:25, 2161:14, 2221:25, 2267:10, 2268:22, 2279:12, 2292:21, 2312:7, 2338:17, 2342:23, 2358:9, running [4] - 2209:22, 2260:5, 2306:5, 2257:12. 2286:7 2367:6 second [17] - 2162:16, 2162:25, sent [16] - 2178:25, 2180:3, 2199:6, ruse [4] - 2216:21, 2216:22, 2216:23, 2172:19, 2181:6, 2228:7, 2258:12, 2203:10, 2203:11, 2210:7, 2210:8, 2243:11 2260:6, 2264:10, 2264:16, 2266:16, 2211:25, 2238:11, 2240:6, 2252:2, ruses [1] - 2289:5 2267:23, 2298:9, 2304:22, 2324:12, 2264:18, 2265:3, 2319:13, 2327:6, rush [3] - 2304:3, 2340:2 2338:24, 2343:25, 2360:2 2355:10 secondly [2] - 2292:9, 2364:25 sentence [3] - 2317:4, 2317:6, 2317:13 S seconds [1] - 2361:3 sentencing [1] - 2316:16 secret [2] - 2201:25, 2227:6 separate [5] - 2164:5, 2185:20, 2204:21, **secretaries** [1] - 2340:23 safeguard [1] - 2285:5 2204:22, 2339:12 secretary [2] - 2228:14, 2325:15 safeguards [1] - 2223:2 September [1] - 2211:14 section [2] - 2237:15, 2365:25 sake [1] - 2253:19 sequence [3] - 2248:17, 2276:16, Section [2] - 2222:25, 2316:16 salary [2] - 2297:4, 2297:5 2313:24 secure [1] - 2252:2 sale [1] - 2350:25 sequentially [1] - 2276:10 secured [1] - 2368:12 sandals [1] - 2300:15 Sercarz [16] - 2160:20, 2210:6, 2236:7, securing [1] - 2283:17 sarcastic [1] - 2280:12 2255:21, 2257:6, 2257:13, 2312:15, see [64] - 2161:7, 2162:9, 2162:17, Sarzecki [1] - 2361:17 2327:3, 2329:14, 2334:16, 2334:17, 2164:3, 2165:19, 2169:9, 2171:13, sat [11] - 2177:7, 2201:6, 2234:23, 2343:4, 2343:7, 2353:16, 2365:16 2176:23, 2184:5, 2193:16, 2194:7, 2305:16, 2309:8, 2321:24, 2322:1, SERCARZ [27] - 2159:19, 2160:20, 2198:21, 2203:8, 2204:5, 2204:16, 2322:11, 2327:14, 2327:24, 2351:1 2161:4, 2183:9, 2183:13, 2236:9, 2204:17, 2204:18, 2207:1, 2208:15, satisfied [1] - 2279:24 2236:10, 2236:14, 2236:17, 2236:21, 2210:11, 2211:8, 2213:20, 2215:2, Saturday [1] - 2279:4 2236:23, 2240:1, 2251:1, 2251:24, 2216:22, 2216:23, 2223:13, 2229:16, save [1] - 2340:16 2255:22, 2255:25, 2257:7, 2257:16, 2231:19, 2233:2, 2236:3, 2244:5, saved [1] - 2340:4 2257:17, 2272:1, 2344:12, 2360:25, 2249:5, 2249:7, 2251:22, 2256:8, savings [1] - 2167:10 2361:3, 2368:2, 2371:14, 2372:9, 2263:4, 2265:9, 2274:20, 2287:4, saw [28] - 2168:19, 2172:25, 2175:12, 2372:11 2293:10, 2294:22, 2294:23, 2295:3, Sergio [1] - 2312:9 2175:17, 2180:14, 2180:15, 2181:14, 2298:13, 2302:6, 2305:5, 2307:23, 2188:1, 2188:2, 2188:5, 2190:2, series [2] - 2303:21, 2310:20 2313:13, 2319:23, 2324:10, 2324:13, 2194:4, 2195:14, 2196:10, 2197:5, serious [1] - 2181:8 2324:17, 2324:18, 2325:17, 2340:14, 2235:8, 2237:12, 2237:17, 2253:14, 2350:16, 2356:24, 2365:25, 2366:5, seriously [1] - 2353:21

serve [1] - 2282:22 2229:11, 2258:25, 2276:20, 2310:19, 2235:4, 2313:2, 2340:12, 2341:22 situation [4] - 2217:12, 2218:11, Service [1] - 2169:4 2318:9. 2343:15 showing [2] - 2264:17, 2324:3 2323:6, 2355:18 services [9] - 2208:10, 2208:11, 2210:1, shown [4] - 2191:9, 2205:25, 2336:2, six [9] - 2178:15, 2261:1, 2294:3, 2216:14, 2216:15, 2264:9, 2270:1, 2296:19, 2296:20, 2296:21, 2306:7 2367:11 2364:5, 2368:23 session [1] - 2160:6 **shows** [10] - 2166:8, 2171:9, 2188:12, Six [1] - 2187:15 **SESSION** [1] - 2257:1 2189:14, 2205:4, 2206:1, 2223:6, size [2] - 2167:21, 2250:14 sessions [2] - 2230:10, 2311:24 2229:16, 2260:8, 2368:17 skills [1] - 2246:23 shrewd [5] - 2167:6, 2172:3, 2213:3, skipped [1] - 2214:18 set [7] - 2178:8, 2189:12, 2189:16, 2232:25, 2238:22 2267:23, 2289:3, 2289:4, 2348:17 sleep [1] - 2346:4 shut [1] - 2292:14 sets [2] - 2366:9, 2366:15 slick [1] - 2287:1 sic [1] - 2311:1 setting [2] - 2183:16, 2316:16 slightly [1] - 2343:12 Sicignano [6] - 2248:14, 2274:20, settled [1] - 2248:2 slip [4] - 2173:4, 2173:5, 2188:11, 2279:20, 2345:1, 2345:9, 2346:12 2222:5 settles [2] - 2218:8, 2232:1 sick [1] - 2205:2 seven [6] - 2231:4, 2291:2, 2294:23, slipped [1] - 2190:12 side [8] - 2233:10, 2263:24, 2263:25, 2295:24, 2306:7, 2340:4 slips [1] - 2211:19 2270:2, 2309:2, 2309:6, 2352:5, **Seven** [1] - 2187:15 small [4] - 2227:3, 2237:14, 2259:7, 2360:7 2259:10 several [2] - 2349:10, 2349:13 Side [2] - 2183:12, 2310:4 Shabazz [1] - 2160:16 smart [2] - 2213:2, 2214:11 side-bar [2] - 2233:10, 2309:6 shall [6] - 2291:13, 2291:14, 2291:15, SML [26] - 2163:9, 2166:10, 2169:11, Side-bar [1] - 2310:4 2169:14, 2175:13, 2175:21, 2176:5, 2292:3, 2308:24, 2316:25 sides [5] - 2253:20, 2272:19, 2341:19, sham [2] - 2304:6, 2304:10 2176:8, 2176:13, 2176:16, 2176:18, 2342:21, 2366:6 2185:16, 2193:21, 2258:2, 2260:4, share [2] - 2233:9, 2268:9 sign [9] - 2204:24, 2224:7, 2282:8, 2260:19, 2262:6, 2268:1, 2268:7, **shared** [1] - 2247:6 2282:9, 2282:10, 2282:18, 2282:23, 2268:14, 2268:15, 2270:17, 2281:18, shareholder [2] - 2280:2, 2280:11 2350:5, 2355:21 2283:4, 2354:19, 2354:22 shareholders [2] - 2280:1 signature [8] - 2175:22, 2176:4, **smoking** [14] - 2162:1, 2162:2, 2162:4, shares [1] - 2163:14 2176:20, 2196:10, 2270:13, 2270:17, 2162:6, 2162:25, 2164:1, 2170:11, shattering [1] - 2252:9 2270:18, 2355:2 2202:13, 2202:19, 2205:7, 2205:8, Shaun [1] - 2305:16 signatures [2] - 2270:19, 2282:15 2212:18, 2238:7, 2265:25 sheet [2] - 2276:22, 2295:23 signed [19] - 2170:14, 2175:19, **snare** [1] - 2289:20 **sheets** [5] - 2239:8, 2239:15, 2239:16, 2176:20, 2194:14, 2222:20, 2224:3, 2239:17, 2276:21 snatched [1] - 2305:13 2224:5, 2240:19, 2240:20, 2245:8, social [2] - 2312:10, 2329:20 shell [3] - 2162:18, 2304:5, 2337:20 2265:1, 2265:3, 2265:4, 2268:1, socializes [1] - 2343:22 shield [1] - 2243:22 2275:22, 2282:17, 2328:10, 2346:20, society [1] - 2199:2 shift [1] - 2182:2 2346:21 sold [1] - 2261:18 shifting [1] - 2180:22 significant [5] - 2162:8, 2247:15, soldiers [1] - 2352:18 shifts [1] - 2224:24 2305:9, 2306:1, 2308:8 solicited [1] - 2242:5 shirt [1] - 2293:17 signing [3] - 2196:8, 2223:25, 2355:20 solid [1] - 2346:16 shirtee [1] - 2277:24 signs [4] - 2223:19, 2224:4, 2303:6, solve [1] - 2275:15 shocked [1] - 2174:1 2350:3 someone [10] - 2242:15, 2292:20, **shoddy** [1] - 2163:20 silence [1] - 2235:17 2329:19, 2331:24, 2338:6, 2342:7, shook [1] - 2302:19 silent [3] - 2229:21, 2229:22, 2235:13 2342:13, 2343:12, 2345:9, 2361:25 **shop** [1] - 2306:23 similar [1] - 2313:15 somersaults [1] - 2283:3 short [4] - 2221:4, 2221:18, 2285:18, simple [7] - 2164:15, 2166:8, 2177:22, sometimes [8] - 2211:2, 2220:6, 2243:1, 2309:3 2231:21, 2232:16, 2243:20, 2307:6 2261:23, 2264:25, 2293:22, 2304:11, shortcut [2] - 2268:11, 2304:12 **simply** [9] - 2166:16, 2168:5, 2188:24, 2310:25 shorted [1] - 2268:17 2189:5, 2198:5, 2243:10, 2268:20, somewhere [1] - 2231:4 **shortly** [1] - 2179:8 2354:12, 2369:11 son [2] - 2180:1, 2352:16 **shortsighted** [1] - 2287:25 sin [1] - 2166:9 soon [1] - 2285:12 shot [1] - 2199:3 sincere [1] - 2197:21 sophisticated [2] - 2187:14, 2243:13 show [37] - 2163:1, 2164:9, 2165:13, single [9] - 2166:23, 2169:5, 2180:7, sorry [11] - 2181:2, 2192:25, 2239:11, 2171:19, 2180:20, 2198:22, 2202:15, 2198:7, 2246:9, 2329:14, 2329:23, 2251:9, 2251:21, 2254:4, 2259:6, 2203:4, 2203:7, 2203:9, 2203:16, 2345:10, 2370:5 2299:5, 2309:11, 2309:12, 2364:12 2203:17, 2206:1, 2208:10, 2220:20, sinus [1] - 2286:14 sort [3] - 2182:2, 2234:22, 2324:11 2233:22, 2242:20, 2245:18, 2252:8, siphon [1] - 2262:18 sought [2] - 2242:4, 2279:8 2254:12, 2254:14, 2254:15, 2258:4, sit [7] - 2224:24, 2284:11, 2285:3, sound [5] - 2205:20, 2206:13, 2214:5, 2298:14, 2300:10, 2303:23, 2305:21, 2322:18, 2328:22, 2332:10 2216:21, 2237:24 2319:21, 2320:10, 2320:20, 2323:17, site [3] - 2229:18, 2247:12, 2247:14 sounds [1] - 2302:18 2324:13, 2324:25, 2343:15, 2346:11, sits [3] - 2318:24, 2322:7, 2328:25 source [1] - 2273:23 2354:21, 2365:17

sources [1] - 2169:20

sitting [7] - 2212:24, 2220:13, 2227:7,

showed [8] - 2166:16, 2218:15,

spanned [1] - 2323:8 starts [6] - 2257:24, 2295:22, 2314:10, 2365:4, 2365:23, 2366:18, 2367:7, 2319:12, 2327:9, 2356:10 2367:15, 2367:17, 2368:17, 2368:20, speaking [1] - 2186:12 Starzecki [255] - 2162:7, 2162:12, 2368:24, 2369:15, 2369:16 speaks [2] - 2205:19, 2266:24 Starzecki's [40] - 2165:24, 2166:10, special [3] - 2181:17, 2192:1, 2341:25 2162:17, 2162:20, 2167:3, 2170:6, 2169:15, 2172:6, 2177:3, 2180:5, 2170:14, 2170:17, 2170:22, 2171:17, **Special** [9] - 2159:22, 2160:12, 2181:10, 2180:24, 2193:1, 2202:2, 2202:11, 2196:14, 2198:18, 2243:9, 2288:19, 2172:7, 2172:13, 2172:15, 2173:9, 2216:11, 2218:20, 2219:3, 2224:17, 2312:3, 2323:22 2173:12, 2173:13, 2173:19, 2174:8, 2251:24, 2257:19, 2275:2, 2298:8, specific [6] - 2311:8, 2317:4, 2326:13, 2174:17, 2174:22, 2177:7, 2178:4, 2312:10, 2313:20, 2318:1, 2318:20, 2339:14, 2341:23 2179:16, 2179:18, 2179:25, 2180:19, 2320:21, 2320:24, 2321:16, 2321:17, 2183:6, 2185:13, 2186:1, 2186:17, specifically [8] - 2173:1, 2185:17, 2187:11, 2187:14, 2189:18, 2193:22, 2323:23, 2329:2, 2330:5, 2330:13, 2189:12, 2307:4, 2349:11, 2352:17, 2193:23, 2195:3, 2195:5, 2195:6, 2331:9, 2332:16, 2333:8, 2338:1, 2357:1, 2364:9 2353:12, 2354:13, 2358:23, 2361:20, spell [1] - 2276:19 2196:18, 2196:24, 2203:19, 2205:20, 2205:24, 2206:4, 2206:9, 2206:11, 2366:1 **spelling** [2] - 2210:8, 2276:17 2206:13, 2206:20, 2206:24, 2208:13, state [4] - 2188:22, 2189:5, 2189:15, spend [10] - 2167:2, 2173:12, 2192:5, 2208:24, 2209:1, 2209:2, 2209:5, 2304:8 2204:7, 2204:8, 2204:11, 2223:14, 2209:12, 2209:16, 2210:7, 2210:21, statement [19] - 2172:12, 2172:16, 2346:2, 2365:14, 2366:16 2210:24, 2211:16, 2212:10, 2212:25, 2186:16, 2229:2, 2234:12, 2238:20, spending [1] - 2248:19 2214:24, 2214:25, 2215:1, 2215:6, 2241:6, 2241:23, 2275:5, 2281:20, spent [5] - 2183:16, 2204:12, 2232:25, 2215:8, 2216:3, 2216:7, 2216:17, 2295:22, 2305:9, 2312:14, 2351:12, 2280:19, 2287:18 2216:25, 2217:15, 2217:23, 2218:4, 2355:13, 2356:6, 2356:7, 2367:5 spice [2] - 2293:6, 2308:1 2218:13, 2218:21, 2218:22, 2219:3, statements [20] - 2171:7, 2178:22, Spina [8] - 2175:17, 2179:4, 2184:23, 2219:6, 2219:10, 2219:11, 2219:17, 2179:13, 2180:17, 2198:22, 2225:20, 2185:16, 2222:24, 2222:25, 2297:15, 2219:20, 2220:16, 2220:24, 2222:8, 2234:15, 2234:17, 2248:18, 2264:17, 2297:18 2223:9, 2224:11, 2224:20, 2225:7, 2264:18, 2267:3, 2270:13, 2274:3, Spina's [1] - 2189:3 2225:17, 2226:6, 2227:2, 2229:17, 2296:17, 2312:1, 2355:20, 2356:5, spinning [1] - 2176:24 2230:4, 2231:22, 2232:6, 2232:16, 2357:15, 2361:18 spirit [1] - 2251:4 2233:23, 2233:24, 2238:14, 2242:7, Staten [1] - 2274:15 split [10] - 2254:4, 2254:5, 2254:14, 2246:1, 2247:7, 2248:2, 2248:17, states [1] - 2270:18 2258:16, 2268:11, 2277:7, 2277:18, 2248:25, 2249:2, 2249:25, 2252:19, **STATES** [3] - 2159:1, 2159:3, 2159:11 2307:10, 2318:17, 2319:16 2254:1, 2255:9, 2257:24, 2264:7, States [9] - 2159:5, 2159:13, 2159:16, spot [2] - 2326:25, 2353:17 2264:20, 2265:1, 2265:8, 2265:20, 2160:5, 2160:10, 2187:24, 2271:12, spring [1] - 2286:14 2265:24, 2269:6, 2269:7, 2269:10, 2284:23, 2306:3 squared [1] - 2261:12 2269:23, 2272:7, 2272:15, 2272:17, statutes [1] - 2301:4 squat [1] - 2298:6 2273:24, 2273:25, 2274:17, 2275:22, stay [13] - 2229:21, 2229:22, 2238:5, squeeze [1] - 2168:19 2276:16, 2277:4, 2277:15, 2277:19, 2238:12, 2241:21, 2242:21, 2243:3, stack [1] - 2332:12 2280:22, 2281:10, 2288:6, 2288:13, 2254:7, 2254:16, 2264:25, 2277:11, staff [1] - 2210:10 2288:14, 2288:15, 2289:19, 2290:2, 2286:18, 2290:20 stage [1] - 2221:8 2295:2, 2295:6, 2296:15, 2296:18, stayed [1] - 2325:25 stake [1] - 2344:25 2298:5, 2298:9, 2303:7, 2304:2, steal [1] - 2353:3 stamp [3] - 2181:24, 2338:16, 2366:10 2305:22, 2307:8, 2311:9, 2311:23, stealing [2] - 2299:6, 2347:21 stand [34] - 2164:13, 2178:3, 2190:5, 2312:1, 2312:5, 2312:6, 2312:13, stenography [1] - 2159:25 2191:22, 2192:4, 2193:14, 2195:1, 2312:22, 2312:25, 2313:7, 2313:12, step [1] - 2257:19 2196:5, 2197:5, 2197:17, 2206:24, 2313:15, 2313:18, 2314:1, 2316:4, stepped [2] - 2282:21, 2322:14 2218:14, 2225:13, 2244:17, 2258:23, 2317:11, 2317:22, 2318:10, 2318:24, **steps** [3] - 2260:24, 2353:21, 2353:24 2266:18, 2269:4, 2284:23, 2284:25, 2319:3, 2319:7, 2319:25, 2321:5, Steve [26] - 2227:21, 2228:5, 2228:8, 2289:1, 2290:19, 2314:4, 2318:21, 2321:7, 2321:11, 2321:19, 2323:7, 2228:9, 2259:19, 2289:9, 2289:10, 2320:2, 2323:14, 2324:19, 2324:24, 2324:8, 2324:9, 2324:15, 2325:6, 2289:24, 2293:16, 2295:2, 2295:8, 2325:11, 2326:25, 2336:21, 2336:22, 2325:19, 2326:17, 2326:18, 2326:20, 2295:14, 2295:21, 2298:11, 2301:11, 2337:11, 2338:3, 2346:19 2327:2, 2327:6, 2327:9, 2327:13, 2302:9, 2302:11, 2302:16, 2302:22, standing [2] - 2237:1, 2343:23 2327:14, 2327:19, 2327:22, 2328:21, 2303:22, 2303:23, 2304:17, 2304:18, standpoint [2] - 2215:6, 2216:24 2328:23, 2331:11, 2332:21, 2333:6, 2307:8, 2307:11, 2307:12 stands [1] - 2164:13 2334:3, 2334:4, 2334:10, 2334:25, STEVENSON [1] - 2159:7 start [17] - 2161:16, 2179:20, 2186:9, 2336:1, 2336:24, 2337:6, 2337:14, Stevenson [109] - 2159:18, 2160:10, 2186:12, 2186:13, 2186:14, 2193:7, 2338:9, 2338:20, 2338:22, 2338:25, 2160:15, 2162:18, 2162:22, 2165:6, 2242:8, 2255:17, 2286:15, 2306:8, 2339:5, 2339:9, 2339:15, 2341:3, 2166:1, 2170:23, 2173:10, 2173:17, 2308:17, 2322:22, 2334:4, 2338:18, 2341:16, 2341:24, 2342:3, 2342:18, 2178:18, 2190:6, 2190:9, 2191:10, 2361:5, 2370:20 2342:19, 2342:24, 2348:14, 2348:18, 2191:13, 2196:20, 2199:11, 2230:22, started [8] - 2179:18, 2217:21, 2217:22, 2353:3, 2353:6, 2353:11, 2353:17, 2230:25, 2234:11, 2234:15, 2240:7, 2255:24, 2306:6, 2306:18, 2306:19, 2353:24, 2358:5, 2358:16, 2363:13, 2241:16, 2261:22, 2282:1, 2287:18, 2314:18 2363:20, 2363:24, 2364:11, 2364:12,

2364:15, 2364:20, 2364:25, 2365:2,

starting [1] - 2352:24

2289:3, 2289:6, 2291:8, 2292:5,

2292:19, 2292:22, 2293:24, 2308:8, 2308:19, 2310:22, 2313:1, 2313:8, 2315:18, 2318:10, 2318:11, 2318:22, 2319:1, 2319:6, 2319:7, 2319:10, 2320:2, 2320:5, 2320:12, 2320:17, 2320:21, 2322:11, 2326:20, 2327:7, 2327:8, 2327:16, 2328:9, 2331:20, 2331:24, 2332:8, 2332:11, 2332:25, 2333:7, 2333:10, 2333:12, 2333:17, 2334:3, 2334:11, 2336:20, 2336:21, 2337:3, 2337:6, 2337:12, 2337:19, 2337:23, 2338:2, 2338:5, 2338:10, 2349:4, 2349:5, 2350:9, 2351:1, 2351:7, 2351:15, 2351:21, 2351:22, 2351:25, 2352:2, 2352:6, 2352:10, 2352:12, 2352:15, 2352:16, 2352:21, 2352:25, 2356:1, 2357:2, 2357:13, 2357:25, 2358:3, 2358:5, 2358:17, 2358:18, 2358:21, 2359:5, 2359:9, 2359:14 Stevie [6] - 2277:24, 2290:1, 2294:8, 2294:11, 2294:19, 2294:20 stick [1] - 2256:1 sticks [3] - 2184:22, 2184:25, 2263:5 stiffed [3] - 2326:21, 2327:11, 2337:15 still [20] - 2166:22, 2185:13, 2225:2, 2227:8, 2227:11, 2232:13, 2266:23, 2266:24, 2272:1, 2278:9, 2284:24, 2286:15, 2304:22, 2307:23, 2315:17, 2336:11, 2347:6, 2356:6 stipulated [4] - 2169:1, 2169:2, 2187:21, 2283:5 **stipulation** [1] - 2165:1 **stood** [4] - 2241:2, 2274:7, 2308:6, 2338:2 **stop** [6] - 2177:1, 2191:14, 2205:3, 2253:19, 2297:17, 2306:14 stopped [2] - 2305:12, 2306:13 stopping [1] - 2322:13 stops [1] - 2248:2 Storage [1] - 2326:6 store [7] - 2162:14, 2167:18, 2175:2, 2295:2, 2295:4, 2308:16, 2326:9 stories [5] - 2163:21, 2174:24, 2180:22, 2181:5, 2298:17 story [24] - 2180:23, 2181:6, 2193:15, 2194:1, 2194:3, 2227:18, 2227:19, 2230:16, 2233:22, 2240:24, 2240:25, 2241:15, 2242:24, 2250:10, 2250:20, 2324:20, 2324:22, 2325:21, 2338:2, 2339:17, 2342:22, 2348:7, 2369:1 straight [3] - 2171:19, 2177:25, 2185:5 straightened [1] - 2261:12 strangest [1] - 2265:1 straw [1] - 2183:16 stream [1] - 2287:5 Street [6] - 2189:17, 2190:2, 2206:12, 2206:15, 2206:16, 2242:6

street [5] - 2236:25, 2237:1, 2237:14,

2271:14, 2305:13

strength [1] - 2234:23

stretch [1] - 2197:8 strings [1] - 2193:21 strip [6] - 2224:10, 2251:16, 2251:19, 2252:1, 2252:6 Strivers' [2] - 2261:14, 2297:4 **strong** [1] - 2292:12 stuck [1] - 2271:10 study [1] - 2288:16 stuff [4] - 2233:19, 2265:1, 2265:6, 2342:17 Stuy [34] - 2163:9, 2166:11, 2167:18, 2168:12, 2169:12, 2169:14, 2175:13, 2175:21, 2176:5, 2176:8, 2176:16, 2176:18, 2185:17, 2190:15, 2199:25, 2212:19, 2212:21, 2215:22, 2219:1, 2219:15, 2219:16, 2260:7, 2261:1, 2265:10, 2265:14, 2343:18, 2346:9, 2349:12, 2349:22, 2350:15, 2351:6, 2355:8, 2367:13, 2367:25 sub [5] - 2194:8, 2233:6, 2233:7, 2306:13, 2314:3 sub-contractor [4] - 2233:6, 2233:7, 2306:13, 2314:3 subcontracting [4] - 2193:18, 2195:5, 2226:22, 2226:23 subcontractor [5] - 2194:4, 2223:9, 2226:15, 2247:5, 2248:4 subcontractors [5] - 2223:6, 2223:18, 2226:18, 2247:11, 2288:23 subject [1] - 2266:1 subjected [1] - 2284:24 subjects [1] - 2243:18 submit [31] - 2162:5, 2163:19, 2186:18, 2189:23, 2197:19, 2198:9, 2199:10, 2203:11, 2226:2, 2247:7, 2253:10, 2257:20, 2258:21, 2259:4, 2260:14, 2261:11, 2263:23, 2268:20, 2271:3, 2272:19, 2273:6, 2274:14, 2275:15, 2276:3, 2276:10, 2278:12, 2280:14, 2280:20, 2282:4, 2282:16, 2284:18 submitted [4] - 2166:13, 2166:14, 2179:11, 2298:15 submitting [1] - 2248:7 subpoena [1] - 2284:4 subpoenaed [1] - 2258:1 subsequent [1] - 2356:5 subsequently [1] - 2240:17 substance [1] - 2243:15 substantial [9] - 2240:24, 2241:9, 2249:13, 2249:22, 2250:5, 2250:21, 2316:13, 2316:22, 2317:9 substantially [1] - 2252:13 substantiate [1] - 2240:6 substantive [3] - 2165:18, 2165:20, 2188:20 **substitute** [1] - 2217:9 **subterfuge** [1] - 2281:19 **subtraction** [1] - 2307:7 subverted [2] - 2272:5, 2272:7 succeed [1] - 2245:4

sudden [1] - 2230:12 suddenly [1] - 2250:10 sued [2] - 2217:15, 2231:24 Sugarhill [1] - 2190:15 suggest [15] - 2217:6, 2258:16, 2273:1, 2286:23, 2290:13, 2292:3, 2292:11, 2294:24, 2305:24, 2332:15, 2334:20, 2348:15, 2349:9, 2354:2, 2354:11 suggested [4] - 2279:9, 2279:13, 2281:18, 2298:20 suggesting [1] - 2324:5 suggestion [3] - 2246:18, 2251:7, 2321:6 suggests [6] - 2258:15, 2263:3, 2266:9, 2267:1, 2267:6, 2285:1 suing [1] - 2218:9 suit [5] - 2218:8, 2231:25, 2232:1, 2248:1, 2280:7 sum [7] - 2180:19, 2183:22, 2262:19, 2335:6, 2362:21 summarize [1] - 2193:16 summary [1] - 2258:4 **SUMMATION** [8] - 2236:8, 2257:15, 2310:10, 2372:4, 2372:6, 2372:8, 2372:10, 2372:12 summation [20] - 2183:15, 2183:16, 2183:21, 2184:3, 2201:13, 2201:20, 2204:9, 2233:16, 2241:3, 2253:24, 2257:14, 2263:20, 2284:14, 2286:8, 2310:8, 2336:17, 2360:14, 2360:15, 2360:18 summations [7] - 2161:17, 2183:13, 2256:5, 2348:25, 2360:19, 2370:5, 2370:10 **SUMMATIONS** [1] - 2161:20 summer [1] - 2194:18 sums [3] - 2267:25, 2272:10, 2364:20 sun [1] - 2286:15 Suozzi [1] - 2279:14 supervise [1] - 2299:8 supplied [2] - 2240:1, 2273:18 supplies [1] - 2239:17 supply [1] - 2259:20 support [4] - 2231:9, 2247:16, 2255:11, 2273:14 supported [1] - 2278:13 suppose [1] - 2290:16 supposed [26] - 2169:19, 2169:20, 2179:5, 2186:7, 2214:2, 2233:4, 2240:19, 2258:14, 2258:15, 2259:21, 2265:5, 2265:24, 2265:25, 2273:4, 2277:8, 2277:9, 2282:9, 2290:11, 2295:14, 2295:15, 2309:17, 2314:3, 2337:9, 2342:7, 2360:14, 2367:23 supposedly [1] - 2230:2 surprised [1] - 2174:2 surprising [1] - 2196:6 surround [1] - 2246:13 surveillance [4] - 2293:13, 2293:14, 2293:15, 2295:3 survive [2] - 2206:22, 2208:3

succeeds [1] - 2270:3

Susannah [2] - 2159:22, 2160:13 susceptible [1] - 2278:19

suspicion [3] - 2204:2, 2204:4, 2250:7

suspicions [1] - 2168:23 **suspicious** [5] - 2196:16, 2362:9, 2362:11, 2362:12, 2362:17 **Sustained** [1] - 2233:13

sustained [1] - 2315:23 **swaying** [1] - 2308:17

swindled [3] - 2199:17, 2199:18,

2199:19

swore [2] - 2308:3, 2308:6 synagogue [1] - 2278:25

Synod [15] - 2180:15, 2266:11, 2272:14, 2274:4, 2274:19, 2323:15, 2326:12, 2341:9, 2341:13, 2341:22, 2341:25, 2342:4, 2342:8, 2342:19

system [3] - 2209:11, 2211:5, 2283:24

T

T-3 [1] - 2220:19 **T-7** [1] - 2220:19

table [10] - 2191:18, 2191:19, 2201:11, 2203:3, 2220:13, 2225:1, 2225:2,

2234:24, 2313:2 **tag** [1] - 2300:14

talks [6] - 2222:25, 2264:10, 2266:5, 2323:22, 2333:3, 2352:12

tank [1] - 2274:18

tape [25] - 2172:7, 2172:16, 2175:1, 2175:2, 2179:22, 2190:1, 2190:8, 2190:24, 2191:1, 2191:8, 2195:14, 2205:18, 2301:24, 2302:5, 2302:18, 2314:9, 2322:25, 2322:24, 2332:22, 2332:25, 2333:5, 2333:10, 2333:13

taped [2] - 2212:12, 2212:17 **tapes** [4] - 2265:16, 2275:2, 2275:3,

2302:14

taping [1] - 2212:11 taught [1] - 2305:1

tax [6] - 2216:20, 2247:19, 2272:25, 2287:18, 2304:7, 2368:21

taxes [4] - 2173:16, 2216:1, 2217:4, 2247:21

taxpayer [1] - 2184:17

taxpayers [2] - 2199:19, 2354:9

tearing [1] - 2266:25 technique [1] - 2217:24 techniques [1] - 2332:23 teeth [1] - 2233:10

telephone [3] - 2243:8, 2269:21, 2302:11

temerity [1] - 2232:12 template [1] - 2273:17

ten [8] - 2162:15, 2225:19, 2285:21, 2291:2, 2303:17, 2305:13, 2306:18, 2335:8

tens [1] - 2342:2

term [3] - 2238:20, 2310:19, 2315:13 terms [10] - 2164:22, 2171:24, 2187:1, 2249:14, 2249:17, 2253:13, 2275:13, 2316:14, 2316:23, 2327:8

test [3] - 2270:14, 2324:8 **tested** [2] - 2334:7, 2334:8

testified [26] - 2173:10, 2185:5, 2185:21, 2189:19, 2209:8, 2219:12, 2222:10, 2224:2, 2225:10, 2229:6, 2235:8, 2240:3, 2257:25, 2259:17, 2259:18, 2260:15, 2265:2, 2298:10, 2311:10, 2312:4, 2313:16, 2318:10,

2318:21, 2321:10, 2327:17, 2336:22 testifies [3] - 2208:19, 2219:5, 2321:20 testify [9] - 2163:4, 2174:22, 2185:24, 2191:21, 2194:1, 2222:15, 2279:20, 2284:3, 2359:17

testifying [3] - 2167:24, 2302:2, 2327:25

testimony [87] - 2163:6, 2170:7, 2176:10, 2177:2, 2177:3, 2181:17, 2182:6, 2189:3, 2189:23, 2190:14, 2190:17, 2191:14, 2191:24, 2192:7, 2195:12, 2195:17, 2196:4, 2196:20, 2196:21, 2197:18, 2197:19, 2197:20, 2198:1, 2198:8, 2198:10, 2199:9, 2208:18, 2209:7, 2219:7, 2224:17, 2229:17, 2243:15, 2246:4, 2246:5, 2246:9, 2250:23, 2251:14, 2251:24, 2252:3, 2252:14, 2253:11, 2254:19, 2254:20, 2255:9, 2255:10, 2257:19, 2262:14, 2264:15, 2273:9, 2273:13, 2274:15, 2275:1, 2275:15, 2278:12, 2278:13, 2278:18, 2280:18, 2280:22, 2284:19, 2304:1, 2304:7, 2305:22, 2306:9, 2307:1, 2311:9, 2312:3, 2313:10, 2317:11, 2318:1, 2320:24, 2321:16, 2321:17, 2324:7, 2330:5, 2330:13, 2332:16, 2333:1, 2333:8, 2335:25, 2336:25, 2337:13, 2341:21, 2343:25, 2350:9, 2353:22, 2354:14, 2361:20

text [3] - 2199:5, 2351:10, 2351:12 THE [97] - 2159:10, 2160:3, 2160:4, 2160:5, 2160:8, 2160:9, 2160:15, 2160:19, 2160:22, 2160:25, 2161:1, 2161:6, 2161:10, 2161:12, 2161:13, 2161:14, 2161:15, 2161:23, 2183:11, 2184:6, 2200:10, 2200:13, 2200:15, 2200:18, 2200:24, 2201:1, 2221:3, 2221:5, 2221:7, 2221:13, 2221:16, 2221:18, 2221:21, 2221:23, 2221:25, 2222:2, 2233:13, 2236:6, 2236:18, 2255:14, 2255:19, 2255:21, 2255:24, 2256:3, 2257:4, 2257:5, 2257:8, 2257:10, 2257:11, 2257:12, 2257:13, 2285:16, 2285:20, 2285:21, 2286:2, 2286:6, 2286:8, 2300:20, 2301:8, 2301:14, 2309:1, 2309:4, 2309:5, 2309:7, 2309:13, 2309:20, 2309:24, 2310:1, 2310:3, 2310:7, 2310:13, 2315:23, 2316:1, 2344:14, 2348:19,

2348:21, 2348:24, 2359:2, 2359:19, 2360:3, 2360:5, 2360:8, 2360:11, 2360:16, 2361:2, 2361:4, 2361:8, 2361:10, 2361:13, 2368:3, 2369:3, 2369:7, 2370:1, 2370:24, 2371:3, 2371:7, 2371:11

theatrical [1] - 2327:1 theatrically [1] - 2310:25 themselves [1] - 2194:4

theory [16] - 2182:3, 2182:5, 2183:24, 2184:5, 2217:7, 2217:8, 2217:12, 2217:13, 2257:22, 2272:9, 2297:25, 2298:1, 2334:19, 2334:23, 2335:22

thereafter [3] - 2240:22, 2246:14, 2277:14

thereby [2] - 2252:5, 2272:9 therefore [4] - 2212:14, 2266:12, 2335:19, 2350:21

they've [13] - 2166:18, 2199:23, 2237:20, 2237:21, 2237:22, 2237:23, 2254:5, 2264:13, 2270:11, 2270:12, 2304:1

thief [1] - 2294:2

thieves [2] - 2287:22, 2291:16 thinking [7] - 2177:5, 2189:13, 2204:6, 2263:21, 2264:25, 2265:5, 2342:8

thinks [4] - 2226:9, 2323:22, 2325:11, 2331:16

third [22] - 2165:2, 2254:4, 2254:14, 2258:16, 2266:17, 2277:7, 2277:17, 2277:18, 2296:25, 2318:25, 2319:14

third-party [1] - 2296:25 thirds [2] - 2319:13, 2319:14 thirty [2] - 2203:16, 2307:16

thirty-four-five [2] - 2203:16, 2307:16

Thomas [1] - 2279:14

thoroughly [2] - 2186:5, 2304:12 **thousand** [4] - 2167:22, 2191:7, 2250:1, 2250:2

thousands [9] - 2178:15, 2188:8, 2193:3, 2199:21, 2298:11, 2335:1, 2336:10, 2342:2, 2353:4

threat [1] - 2352:20 threaten [1] - 2190:23

threatened [7] - 2194:17, 2197:24, 2198:12, 2199:7, 2301:18, 2351:10, 2351:15

threatening [1] - 2199:2

threats [3] - 2301:12, 2352:11, 2359:7
three [49] - 2162:18, 2169:5, 2171:6,
2172:23, 2174:25, 2178:8, 2178:12,
2179:12, 2186:19, 2199:14, 2199:16,
2203:8, 2203:10, 2204:21, 2204:22,
2222:8, 2236:22, 2239:8, 2244:12,
2246:7, 2246:16, 2249:16, 2254:1,
2257:23, 2260:3, 2260:10, 2260:23,
2261:5, 2263:18, 2265:17, 2282:21,
2290:11, 2290:22, 2294:22, 2298:16,
2303:24, 2319:4, 2319:17, 2323:2,
2330:8, 2330:24, 2332:20, 2353:8,
2354:4, 2354:5, 2357:23, 2360:19,

2366:9, 2369:21

three-day [1] - 2263:18

threw [5] - 2181:2, 2211:22, 2308:1, 2347:1, 2347:3

throughout [5] - 2244:17, 2278:21,

2314:13, 2347:6, 2354:4

throw [3] - 2181:13, 2325:15, 2330:19

throwing [2] - 2263:4, 2263:7 thrown [3] - 2212:8, 2296:9, 2314:17

throws [3] - 2181:19, 2232:7, 2323:14

thunder [1] - 2237:24

Thursday [1] - 2159:7

tickee [1] - 2277:24

tie [2] - 2212:19, 2304:2

tied [2] - 2341:1, 2348:7

tight [1] - 2316:7

tightrope [2] - 2314:20

timetable [1] - 2256:2

timing [5] - 2162:8, 2170:9, 2171:3,

2171:5, 2171:12 tiny [1] - 2166:5

tired [1] - 2288:10

tirelessly [1] - 2270:9

title [3] - 2176:14, 2176:15, 2270:16

today [2] - 2202:23, 2256:5

toes [1] - 2287:5

together [11] - 2163:2, 2163:24,

2172:24, 2181:4, 2185:9, 2200:2, 2278:15, 2319:17, 2325:25, 2350:20,

2351:5

toilet [1] - 2296:4

toilet's [1] - 2296:5

tomorrow [5] - 2202:23, 2299:5, 2299:6,

2370:22, 2371:11

ton [1] - 2204:12

tone [2] - 2198:13, 2312:1

tones [1] - 2311:1

tonight [1] - 2236:25

tons [1] - 2180:9

took [24] - 2167:17, 2168:7, 2188:3,

2188:13, 2190:5, 2191:22, 2197:17,

2203:22, 2210:3, 2210:18, 2233:9,

2244:16, 2268:2, 2269:4, 2284:23, 2285:2, 2288:17, 2307:25, 2334:9,

2339:22, 2349:20, 2353:2, 2353:21,

2360:25

top [7] - 2179:11, 2251:16, 2251:20,

2335:5, 2350:19, 2365:17, 2365:20

Torres [3] - 2312:11, 2329:19, 2329:22

TORRES [1] - 2159:23

torture [1] - 2265:5

total [5] - 2252:23, 2254:9, 2258:12,

2277:9, 2307:19

totaling [1] - 2254:2

totally [3] - 2339:4, 2358:12, 2365:6

tough [2] - 2235:2, 2290:22

toward [2] - 2262:19, 2277:1

towards [1] - 2219:18

townhouse [2] - 2168:1, 2168:8

track [3] - 2197:7, 2260:2, 2308:17

traditional [1] - 2216:2

train [1] - 2234:7

training [2] - 2204:11, 2204:12

trait [1] - 2181:5

transaction [6] - 2195:9, 2266:5,

2320:17, 2345:8, 2363:8, 2363:9

transactional [1] - 2208:20

transactions [7] - 2187:18, 2187:23,

2187:25, 2245:14, 2249:4, 2320:18, 2345:7

transcript [5] - 2159:25, 2237:23,

2243:16, 2311:11, 2328:3

TRANSCRIPT [1] - 2159:10

Transcription [1] - 2159:25

transcripts [1] - 2324:3

transferred [1] - 2261:19

transfers [1] - 2169:1

traps [1] - 2289:3

treat [1] - 2293:11

treated [1] - 2192:2

treatment [1] - 2192:3

tree [1] - 2308:23

TRIAL [1] - 2159:10

trial [30] - 2160:9, 2161:24, 2162:1,

2162:3, 2162:4, 2162:6, 2163:7,

2181:17, 2182:4, 2200:9, 2204:12,

2225:21, 2226:6, 2228:13, 2234:12,

2234:20, 2235:10, 2235:13, 2237:22,

2244:17, 2271:3, 2271:9, 2284:19,

2290:22, 2293:5, 2294:5, 2308:8,

2336:18, 2367:12 trials [1] - 2347:6

tribulations [1] - 2347:6

tricked [1] - 2287:6

tricky [2] - 2290:4, 2290:6

tried [9] - 2166:18, 2183:3, 2202:12, 2204:18, 2228:5, 2284:12, 2303:1,

2349:9, 2350:10

tries [2] - 2232:15, 2346:24

trip [1] - 2245:23

trips [1] - 2263:8

trouble [8] - 2206:4, 2231:23, 2321:3,

2321:13, 2321:19, 2322:6, 2329:15,

2329:16

troubling [1] - 2253:8

trough [1] - 2306:20

true [16] - 2173:6, 2173:7, 2192:13,

2203:6, 2204:2, 2234:17, 2288:13,

2289:15, 2298:14, 2312:2, 2322:23, 2327:23, 2336:14, 2337:25, 2339:8,

2354:13

trust [5] - 2288:25, 2296:6, 2297:1,

2298:19

trustworthy [2] - 2288:21, 2288:24 truth [17] - 2191:23, 2198:4, 2214:14,

2216:13, 2245:23, 2249:20, 2270:25,

2285:13, 2292:7, 2311:22, 2312:17,

2317:15, 2317:23, 2331:15, 2334:3, 2367:7, 2369:17

truthful [3] - 2249:21, 2318:2, 2329:25

truthfully [2] - 2302:2, 2348:1

truthfulness [1] - 2316:24

try [20] - 2166:18, 2185:7, 2187:12,

2193:16, 2213:19, 2214:19, 2215:17,

2219:6, 2233:2, 2234:2, 2238:23,

2239:2, 2244:6, 2270:3, 2283:3,

2287:1, 2323:18, 2348:13, 2351:20

trying [23] - 2176:17, 2177:18, 2180:4,

2181:18, 2181:20, 2182:3, 2183:2, 2196:9, 2197:4, 2200:1, 2206:22,

2208:2, 2213:16, 2214:5, 2218:22,

2231:18, 2232:13, 2256:1, 2262:6,

2325:5, 2344:6, 2352:5, 2367:25

Ts [1] - 2306:21

tubes [1] - 2249:24

tumultuous [1] - 2286:12

tune [1] - 2356:10

turned [5] - 2246:23, 2261:3, 2283:3,

2288:16, 2351:3

turns [1] - 2343:10

TV [2] - 2164:3, 2370:15 twelve [1] - 2303:17

twenty [5] - 2232:10, 2246:23, 2296:22,

2307:18

twenty-five-five [1] - 2307:18

twenty-four-five [1] - 2307:18

twenty-year [1] - 2246:23

twice [4] - 2163:16, 2176:7, 2183:22,

2302:24

two [57] - 2162:25, 2163:9, 2165:14,

2165:16, 2165:19, 2172:11, 2173:2, 2173:7, 2183:13, 2186:19, 2193:11,

2196:19, 2196:25, 2197:3, 2202:14,

2218:5, 2233:24, 2237:25, 2240:4,

2246:12, 2250:1, 2254:1, 2254:10,

2258:13, 2264:12, 2267:9, 2267:20,

2270:19, 2273:10, 2275:18, 2276:8,

2276:10, 2279:7, 2282:21, 2283:1,

2284:20, 2289:24, 2292:10, 2297:7, 2297:8, 2303:14, 2307:17, 2308:7,

2311:12, 2316:5, 2317:19, 2319:14,

2323:5, 2334:13, 2336:20, 2356:5, 2357:23, 2357:25, 2366:6, 2366:15

two-and-a-half [3] - 2292:10, 2297:7,

2308:7

two-thirds [1] - 2319:14

type [5] - 2182:5, 2195:15, 2209:11, 2362:15, 2363:9

U

U.S [5] - 2166:14, 2169:4, 2249:11,

2303:5, 2303:18 ultimately [3] - 2261:9, 2261:19,

2263:16

unable [1] - 2305:12

uncovered [2] - 2353:7, 2354:6

undefined [1] - 2250:21

under [27] - 2196:19, 2210:12, 2224:14,

2234:17, 2237:1, 2239:14, 2241:15, 2244:10, 2244:13, 2244:14, 2248:15,

2249:24, 2250:15, 2252:11, 2263:11,

2265:9, 2269:6, 2274:1, 2275:11,

2277:20, 2284:21, 2301:16, 2301:18, 2303:5, 2330:18, 2338:7, 2367:4

underneath [1] - 2251:22 underpaying [1] - 2217:16 understood [2] - 2316:20, 2319:3

unearth [1] - 2242:25 unequivocally [1] - 2163:1 uneven [1] - 2187:13 unfair [1] - 2280:16 unfolds [1] - 2249:2

undercover [1] - 2207:2

 $\pmb{\text{unfortunately}}\, {\tiny [3]} - 2205{:}1,\, 2233{:}17,\\$

2313:23

unilateral [1] - 2189:8

UNITED [3] - 2159:1, 2159:3, 2159:11 United [9] - 2159:5, 2159:13, 2159:16, 2160:5, 2160:10, 2187:23, 2271:12, 2284:23, 2306:3

university [2] - 2288:14, 2288:18 unlawful [2] - 2245:14, 2249:3 unless [6] - 2223:21, 2223:22, 2241:8,

2244:19, 2272:19, 2287:2 unlike [1] - 2365:10 unluckiest [1] - 2170:20 unquote [1] - 2264:7 unraveled [1] - 2197:6 unreliable [1] - 2329:24 unrepentant [1] - 2278:18 untangle [1] - 2286:22

untruthful [2] - 2329:24, 2331:1

unveiled [1] - 2369:19 unwittingly [1] - 2253:10

up [134] - 2161:25, 2163:16, 2163:20, 2163:21, 2166:17, 2167:25, 2168:1, 2168:2, 2168:4, 2168:6, 2169:22, 2170:2, 2173:11, 2174:4, 2174:16, 2174:24, 2177:7, 2177:18, 2177:19, 2178:8, 2179:25, 2182:3, 2183:16, 2183:22, 2184:23, 2185:4, 2185:7, 2185:21, 2186:1, 2187:11, 2189:12, 2189:17, 2190:22, 2191:6, 2191:22, 2192:14, 2192:21, 2194:15, 2205:24, 2210:12, 2210:13, 2215:10, 2218:4, 2227:7, 2230:4, 2230:5, 2232:15, 2234:4, 2236:12, 2236:15, 2237:4, 2239:2, 2241:4, 2241:5, 2242:15, 2243:2, 2243:14, 2243:25, 2249:2, 2249:9, 2249:22, 2250:18, 2254:2, 2254:13, 2258:20, 2259:23, 2261:2, 2261:9, 2261:25, 2263:4, 2267:18, 2269:7, 2272:2, 2275:6, 2275:18, 2276:11, 2276:15, 2276:22, 2287:9, 2287:11, 2288:5, 2289:4, 2289:17, 2291:17, 2292:10, 2302:14, 2302:19, 2307:23, 2308:6, 2310:25, 2311:16, 2311:25, 2312:25, 2313:5, 2314:16, 2315:16, 2315:21, 2317:10, 2318:8, 2318:18, 2319:19, 2319:20, 2319:21, 2320:8, 2322:6, 2327:12, 2327:17, 2329:15, 2329:19, 2330:20, 2334:22,

2336:20, 2336:25, 2338:2, 2338:4,

2341:1, 2342:21, 2342:25, 2343:6, 2343:11, 2344:14, 2344:19, 2347:7, 2352:16, 2356:17, 2356:24, 2358:4, 2359:10, 2359:22, 2361:16, 2366:8

upset [1] - 2364:13

Urban [4] - 2166:15, 2175:18, 2179:1,

2297:13

urge [1] - 2264:15 **Ursis** [2] - 2253:1, 2364:21 **US** [3] - 2287:8, 2291:10, 2299:2

USSG [1] - 2316:16 usual [1] - 2231:20 usury [2] - 2263:3, 2263:5

٧

vacations [1] - 2296:24 valuable [1] - 2357:22

value [3] - 2252:23, 2295:23, 2316:24

vanish [1] - 2244:16 vantage [1] - 2284:1 various [1] - 2239:18

VButlerRPR@aol.com [1] - 2159:24

vehicle [1] - 2357:19 vein [1] - 2183:20

vendor [3] - 2239:8, 2239:15, 2276:21

venture [1] - 2270:11 verdict [1] - 2202:6

version [4] - 2183:14, 2244:7, 2255:12, 2273:14

versus [3] - 2160:10, 2198:4, 2344:22 vice [16] - 2175:22, 2176:5, 2176:8, 2176:11, 2176:13, 2176:14, 2176:16, 2176:18, 2177:23, 2196:12, 2201:24, 2201:25, 2270:16, 2355:3, 2355:14

victim [1] - 2198:6 Victor [2] - 2259:6, 2309:8

VICTORIA [1] - 2159:23 view [6] - 2186:8, 2246:6, 2266:10,

2273:13, 2343:12 Vineyard [1] - 2199:23 violate [1] - 2164:14

violating [3] - 2217:15, 2218:6, 2232:2

violence [4] - 2301:12, 2301:17,

2301:18, 2302:25 Visa [1] - 2295:12

vivid [2] - 2195:14, 2197:21 voice [3] - 2205:19, 2302:5, 2343:4

voluminous [1] - 2283:19 Volunteers [1] - 2344:2

vote [1] - 2342:13 vouched [1] - 2289:1 vulnerable [1] - 2292:6

W

wage [17] - 2217:16, 2218:6, 2226:21, 2232:3, 2238:18, 2247:12, 2247:15, 2248:3, 2248:18, 2269:12, 2269:13, 2288:23, 2314:1, 2314:6, 2315:12,

2330:17

wages [1] - 2247:6

wait [5] - 2193:22, 2293:20, 2295:1,

2360:16, 2361:4 waited [1] - 2203:14

waits [1] - 2172:1 wake [2] - 2253:5, 2275:1

walk [3] - 2172:7, 2237:4, 2294:18 walked [10] - 2191:22, 2312:7, 2315:9, 2323:7, 2329:2, 2329:3, 2329:4,

2351:5, 2368:25, 2369:17

walking [4] - 2236:24, 2300:15, 2316:7, 2352:17

walks [2] - 2314:6, 2315:13

walkthroughs [2] - 2283:19, 2283:21

wall [3] - 2224:25, 2235:7, 2263:4 Walters [77] - 2164:21, 2167:23, 2168:5, 2174:15, 2178:6, 2178:13, 2185:24, 2186:4, 2188:19, 2189:1, 2189:6, 2189:9, 2189:16, 2189:19, 2190:5, 2190:13, 2190:14, 2190:23, 2191:2, 2191:4, 2191:10, 2192:13, 2192:16, 2195:15, 2195:18, 2195:20, 2196:21, 2199:6, 2218:1, 2222:9, 2222:10, 2222:12, 2225:8, 2225:23, 2227:24, 2241:4, 2259:24, 2261:10, 2261:13, 2261:20, 2262:10, 2262:14, 2262:22, 2262:25, 2263:7, 2296:23, 2298:18, 2298:25, 2303:7, 2305:1, 2312:9, 2321:10, 2321:12, 2321:13, 2321:14, 2326:22, 2328:20, 2328:21, 2328:24, 2330:22, 2331:19, 2332:9, 2332:10, 2333:11, 2333:12, 2351:15, 2351:19, 2351:21, 2351:23, 2351:24, 2352:1, 2352:3, 2352:4, 2352:25, 2353:1,

2353:10, 2354:14 Walters' [4] - 2189:23, 2190:13, 2190:17, 2196:21

Walters's [1] - 2168:8 wandering [1] - 2327:3

wants [11] - 2205:7, 2224:12, 2226:11, 2263:25, 2327:22, 2328:4, 2330:17, 2333:15, 2339:12, 2346:6, 2365:4

warned [1] - 2286:18 wash [1] - 2251:3

Washington [1] - 2300:17

waste [1] - 2287:17 watch [1] - 2307:10 watched [1] - 2234:24

watching [2] - 2279:3, 2306:23 water [2] - 2296:5, 2308:24

waters [3] - 2166:18, 2287:2, 2287:4 ways [5] - 2212:20, 2267:9, 2279:7,

2334:8, 2358:3 weak [1] - 2292:5

week [3] - 2177:2, 2299:4, 2369:23 weekend [3] - 2263:18, 2370:8, 2370:9 weeks [4] - 2308:7, 2354:4, 2354:5,

2369:21

weigh [1] - 2250:6

weight [3] - 2284:21, 2291:14, 2305:9

weird [3] - 2170:5, 2187:10, 2191:1 welcome [2] - 2184:2, 2222:3 well-lit [1] - 2348:10 Wendell [77] - 2164:21, 2167:23, 2168:5, 2168:8, 2174:15, 2178:6, 2178:13, 2185:24, 2186:4, 2188:19, 2189:1, 2189:16, 2189:19, 2189:22, 2190:5, 2190:17, 2190:23, 2191:10, 2192:13, 2195:15, 2195:18, 2195:20, 2196:21, 2199:6, 2218:1, 2222:9, 2222:10, 2222:12, 2225:7, 2225:23, 2227:24, 2241:4, 2259:24, 2261:10, 2261:20, 2262:6, 2262:10, 2262:13, 2262:21, 2263:7, 2296:23, 2298:18, 2298:25, 2303:7, 2305:1, 2312:9, 2321:10, 2321:13, 2321:14, 2326:22, 2328:14, 2328:16, 2328:20, 2328:21, 2328:24, 2330:22, 2330:23, 2331:19, 2332:3, 2332:5, 2332:9, 2333:11, 2333:14, 2351:15, 2351:21, 2351:23, 2351:24, 2351:25, 2352:1, 2352:3, 2352:4, 2352:24, 2353:1, 2353:10, 2354:14 wheel [1] - 2168:15 wheels [1] - 2176:24 wherewithal [2] - 2277:23, 2277:25 whistle [1] - 2251:4 whole [13] - 2171:2, 2179:10, 2184:15, 2190:24, 2210:23, 2223:4, 2330:19, 2332:5, 2334:20, 2337:5, 2341:12, 2342:6, 2366:4 whoops [1] - 2180:19 wide [1] - 2171:2 wife [3] - 2280:3, 2280:4 willfully [2] - 2225:5, 2281:16 willing [5] - 2321:18, 2329:8, 2332:1, 2339:1, 2339:3 willingness [1] - 2255:2 win [2] - 2167:16, 2313:9 wind [1] - 2286:15 windows [1] - 2223:17 wine [2] - 2332:12, 2333:13 winning [2] - 2294:15, 2298:8 wire [12] - 2168:24, 2169:1, 2186:21, 2188:15, 2238:19, 2245:6, 2312:25, 2313:5, 2314:6, 2315:15, 2321:7, 2353:1 wire-up [1] - 2312:25 **wisdom** [1] - 2285:12 wise [1] - 2235:16

wire-up [1] - 2312:25 wisdom [1] - 2285:12 wise [1] - 2235:16 wisest [1] - 2235:17 wish [1] - 2291:21 wished [1] - 2260:11 witch [1] - 2204:19 withdraw [1] - 2351:2 withdrawal [2] - 2188:11, 2188:13 withdrawn [1] - 2278:5 withdrew [1] - 2351:2

WITNESS [1] - 2372:2 witness [47] - 2163:6, 2184:20, 2185:2, 2189:24, 2191:25, 2192:3, 2192:17,

2194:22, 2194:23, 2206:24, 2218:13, 2225:7, 2225:12, 2231:22, 2242:23, 2244:17, 2248:11, 2248:14, 2251:12, 2252:11, 2253:7, 2254:3, 2254:19, 2266:18, 2269:4, 2274:19, 2274:21, 2274:24, 2284:23, 2284:25, 2290:19, 2293:7, 2298:1, 2300:4, 2303:2, 2303:3, 2313:19, 2313:20, 2318:21, 2334:5, 2334:6, 2334:7, 2338:3, 2338:4, 2338:7, 2344:22, 2344:23 witnesses [25] - 2177:5, 2178:2, 2184:10, 2184:11, 2198:3, 2225:10, 2245:20, 2250:15, 2280:18, 2287:16, 2291:25, 2292:1, 2292:5, 2310:18, 2343:14, 2344:22, 2345:15, 2345:16, 2346:5, 2346:7, 2346:8, 2346:9, 2346:10, 2349:11, 2367:8 Wolitz [1] - 2226:20 Wolitz's [1] - 2223:8 Wolocz's [1] - 2364:23 Wolosz [2] - 2247:5, 2248:4 woman [3] - 2284:3, 2298:22, 2345:12 wonder [2] - 2219:22, 2292:24 word [21] - 2164:16, 2172:6, 2198:7, 2198:9, 2216:11, 2218:24, 2224:10, 2224:11, 2224:14, 2227:14, 2227:20, 2227:21, 2245:21, 2246:9, 2260:20, 2282:6, 2282:7, 2288:21, 2338:16, 2357:21, 2357:22 words [5] - 2172:6, 2253:14, 2272:5, 2305:25, 2325:17 workers [9] - 2217:16, 2218:9, 2218:15, 2231:25, 2233:3, 2247:5, 2247:12, 2247:14, 2314:2 works [3] - 2214:16, 2220:4, 2331:11 World [6] - 2193:18, 2193:24, 2195:2, 2195:8, 2337:7, 2337:9 world [13] - 2170:20, 2171:2, 2178:7, 2184:24, 2186:8, 2231:5, 2232:22, 2232:23, 2243:1, 2263:7, 2295:8, 2340:19, 2356:25 worry [3] - 2247:15, 2294:9, 2294:11 worse [2] - 2192:2, 2242:24 worst [1] - 2325:24 worth [15] - 2162:17, 2167:8, 2178:4, 2215:8, 2216:25, 2227:2, 2261:4, 2261:5, 2264:17, 2265:7, 2265:8, 2265:17, 2294:20, 2329:4, 2339:23 wrap [1] - 2361:16 wretched [2] - 2288:12 write [5] - 2179:16, 2209:14, 2318:24, 2368:21, 2368:23 write-off [1] - 2368:21 writes [1] - 2254:1 writing [6] - 2162:17, 2175:14, 2277:4, 2340:7, 2354:22, 2361:24 written [16] - 2162:9, 2163:9, 2163:12,

wrote [14] - 2175:16, 2175:19, 2276:16, 2276:21, 2303:13, 2307:15, 2307:16, 2307:17, 2319:2, 2321:25, 2322:1, 2322:2, 2337:14, 2355:6

Υ

year [9] - 2175:21, 2216:20, 2230:11, 2246:23, 2262:13, 2264:9, 2270:1, 2275:24, 2286:12 yearning [1] - 2288:11 years [42] - 2163:19, 2170:6, 2170:21, 2193:1, 2196:19, 2196:25, 2197:3, 2199:21, 2205:5, 2212:5, 2218:5, 2232:10, 2232:24, 2244:12, 2247:22, 2260:22, 2279:22, 2280:19, 2284:21, 2292:10, 2297:15, 2303:14, 2306:7, 2306:18, 2306:20, 2314:18, 2315:1, 2315:15, 2315:16, 2316:5, 2317:19, 2325:9, 2334:13, 2337:20, 2342:24, 2345:9, 2345:12, 2359:4, 2369:18 years' [1] - 2329:4 yellow [3] - 2169:23, 2170:2, 2236:18 yesterday [10] - 2161:16, 2163:7, 2176:6, 2180:15, 2181:17, 2197:5, 2197:22, 2265:17, 2267:25, 2272:5 vielded [1] - 2290:13 yo [2] - 2172:8, 2172:19 **YORK** [1] - 2159:1 York [18] - 2159:5, 2159:14, 2159:15, 2160:6, 2164:20, 2199:17, 2199:19, 2199:21, 2272:10, 2279:11, 2297:5, 2297:12, 2297:23, 2314:13, 2343:18, 2345:16, 2346:8, 2354:11 young [2] - 2224:1, 2302:1 younger [1] - 2303:2 yourself [11] - 2229:19, 2235:4, 2262:8, 2280:17, 2284:17, 2295:20, 2302:14, 2302:15, 2302:17, 2302:18, 2329:13 yourselves [4] - 2246:7, 2246:8, 2255:4, 2370:11 Yul [1] - 2310:15

Ζ

zeal [1] - 2292:13 zero [1] - 2268:13

2163:17, 2268:1, 2268:3, 2268:4,

2268:20, 2268:23, 2276:14, 2296:17,

2302:10, 2320:4, 2354:19, 2355:11

wrongdoing [1] - 2248:24